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Volume VI

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.
DONNELLY GARMENT COMPANY, DONNELLY GAR-
MENT WORKERS' UNION AND INTERNATIONAL
LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS
UNION, PETITIONER

vs.
DONNELLY GARMENT COMPANY, DONNELLY GAR-
MENT WORKERS' UNION AND NATIONAL LABOR
RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 20, 1941
CERTIORARI GRANTED BY SUP. CT. 2-1-1941

United States Circuit Court of Appeals
EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

VS.

**NATIONAL LABOR RELATIONS BOARD,
RESPONDENT.**

**DONNELLY GARMENT WORKERS' UNION,
INTERVENER.**

**INTERNATIONAL LADIES' GARMENT WORKERS'
UNION, INTERVENER.**

**ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR
RELATIONS BOARD.**

FILED AUGUST 5, 1943.

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United States of America
Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union,
Party to the Contract.

Case No. XVII-C-371.

Stipulation.

It is hereby stipulated by the parties to this proceeding that the attached photostat copies of respondent's Exhibit 2 (rejected) may be substituted for respondent's Exhibit 2 (Contracts between various garment companies and International Ladies' Garment Workers' Union).

DANIEL J. LEARY

Attorney, Seventeenth Region,
National Labor Relations
Board.

CLIF LANGSDALE

JANE WALKER PALMER

Attorneys for International
Ladies' Garment Workers'
Union.

FRANK E. TYLER

Attorneys for Intervenor
Donnelly Garment Workers'
Union.

REED & INGRAHAM

Attorneys for Respondent.

[fol. 5992] (Part of Respondent's Exhibit 2—Rejected)

State of Missouri,

County of Jackson—ss.:

This agreement made this twelfth day of April, 1937, by and between the Missouri Garment Company, Incorporated, a corporation with its principal office in Kansas City, Missouri, hereinafter called the "Employer" and the Joint Board of the Kansas City locals, and the International Ladies' Garment Workers' Union, hereinafter called the "Union."

Witnesseth:

Whereas, the parties hereto desire to establish a standard of conditions under which the workers employed by the said Employer, shall be employed during the term of this Agreement, and

Whereas, the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure the workers a living wage and fair and reasonable conditions of labor; and to provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and general stabilization of the industry, to the honor and dignity of all parties concerned, as well as to the general welfare of the community at large, and

Whereas, both parties recognize that it is due to the consuming public whose patronage supports the industry as well as to the existence of the industry in Kansas City and all activities, decisions and arrangements growing out of this Agreement shall be based on the principles of true efficiency and the necessity for the lowest unit cost of production possible under the wage scales determined by this Agreement.

Now, Therefore, in consideration of the mutual promises and obligations assumed, the parties hereto agree as follows:

1. All the workers who are now on strike and who were in the employ of the Employer on the 17th day of March, 1937, shall be reinstated by the Employer within two (2)

weeks from the signing of this Agreement without discrimination.

1. (a) The term "workers" used herein is understood to mean manufacturing employees; that is, employees who are actually engaged in the making of garments.

[fol. 5993] This Agreement is not intended to cover any employees or officers who are not actually engaged in the making of garments and does not include officers, executives, designers, assistant designers, superintendents, foremen, forewomen, office employees, or any employee engaged in the shipping department. Such employees or officers do not come under this Contract.

2. The Employer agrees to employ none but members in good standing of the International Ladies' Garment Workers' Union. The Employer agrees that he will not have in his employ three (3) weeks after the date of the signing of this Agreement any worker who was in its employ on March 17th, 1937, and who is not at said time a member of the Union. In case the Employer is in need of additional workers he shall apply for such workers to the Union. Should the Union be unable to supply the Employer with the required competent workers suitable and acceptable to the Employer, the Employer shall have the right to employ non-union workers and after a trial period of four (4) weeks, no such worker shall remain in the employ of the Employer unless he or she shall have become a member in good standing of the Union.

3. The employer agrees to divide the work of the several departments equally and equitably among all the regular employees in such departments of the shop. No worker shall be discriminated against. The seasonal employees that are hired for seasonal employment may be laid off when and as their services are no longer needed. The employer reserves the right to discharge any employee at any time for just cause.

4. The working week shall consist of forty (40) hours per week divided into the first five (5) days of the week. During busy periods or when necessary on special work when overtime is deemed necessary by the Employer, such overtime work at regular prices shall be permitted, but

* there shall be no abuse of this right of overtime by the Employer.

5. Thirteen Dollars per week shall be the minimum weekly wage for a female worker of normal speed and ability.

[fol. 5994] 5. (a) The piece rates for piece workers shall be set at a basis whereby not less than 70% of the non-apprentice female workers in the different departments of the shop shall be able to earn not less than Thirteen Dollars per week.

5. (b) The wages for cutters and spreaders shall be not less than the wages received by them at present.

5. (c) The wage scale for Apprentices shall be not less than \$7.75 per week for a girl for the first six weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

6. No workers shall be called in for less than one-half a day's work.

7. The piece rates for piece workers shall be agreed upon mutually by the Employer and a committee of not less than three and not more than five, selected by and from the the employees of the shop, known as the Shop Committee. Such committee shall be elected by the workers from their own membership and no person shall be eligible for election to such committee who has not been an employee of the Missouri Garment Company, Incorporated for at least one year next prior to election. The prices so set shall be fair and equitable. This price committee and the Employer shall meet weekly after working hours for the adjustment of all prices.

8. One member of the Shop Committee shall be its chairman, who shall represent the shop committee in all matters of any grievances that may arise in the shop between the Employer and the workers. Any matter of grievance which cannot thus be speedily adjusted shall be considered by the Employer and the Shop Committee as a whole.

9. There shall be no strikes, sit downs, stoppages or lockouts during the life of this contract.

10. The Union and the Employer agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shop of the Employer.

[fol. 5995] H. Any and all complaints that may arise in the shop of the Employer between the workers and Employer or between the Union and the Employer shall at the first instance be taken up outside of working hours for adjustment between the Shop Committee and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union and a representative of the Employer. In case no agreement is reached, either of the parties, the Employer or the Union, shall have a right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by Employer and an accredited representative of the Union within 48 hours from the time either of the parties shall notify the other party that such arbitration is to take place.

In case the employer and an accredited representative of the Union shall fail to agree on an arbitrator within 48 hours, after such notice, either of the parties, the Union or the Employer, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

The decision of any arbitrator so agreed upon and selected shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by the Employer and the Union.

12. In all cases where strikes may occur in other shops the workers (in the employ of the Missouri Garment Company, Incorporated, shall not be compelled or encouraged to participate in any of the strike activities.

13. This contract shall be binding upon the parties and their successors in interest for the period from July 1, 1937 to and including June 30, 1939, and the parties represent that they are authorized by their respective boards to enter into this agreement.

[fol. 5996] In witness whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this twelfth day of April, 1937.

**MISSOURI GARMENT COMPANY,
INCORPORATED**

By S. M. Feinberg, President.

**INTERNATIONAL LADIES'
GARMENT WORKERS' UNION**

By Meyer Perlstein, Regional Director

Witnessed:

Wave Tobin

Isadore Rich

[fol. 5997] (Part of Respondent's Exhibit 2
Rejected.)

This agreement made this seventh day of April 1937 by and between the Gernes Garment Company, a corporation of Missouri, hereinafter referred to as the "Employer" or the "Company" and the International Ladies' Garment Workers' Union, an unincorporated association, hereinafter referred to as the "Union" or the I.L.G.W.U.

Witnesseth:

Whereas, the parties hereto desire to establish a standard of conditions under which the workers employed by the said Employer shall be employed during the term of this Agreement, and

Whereas, the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure the workers fair and reasonable conditions of labor and wages and to provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and general stabilization of the industry, to the honor and dignity of all parties concerned, as well as to the general welfare of the community at large, and

Whereas, this agreement is entered into upon a basis of good faith on the part of all parties hereto,

Now, therefore, in consideration of the mutual promises and obligations assumed, the parties hereto agree as follows:

1. The International Ladies' Garment Workers' Union agrees to the establishment in the City of Kansas City of a separate Local for the workers employed in the shops of the Gernes Garment Company. The said Local shall be under the direct supervision of the General Executive Board of the I.L.G.W.U. and shall be identified as Local No. —

1.(a) The term "workers" used herein is understood to mean manufacturing employees; that is employees who are actually engaged in the making [—] garments.

This agreement is not intended to cover any employees or officers who are not actually engaged in the making of garments and does not include officers, executives, de-[fol. 5998] signers, superintendents, foremen, forewomen, office employees, or any employee engaged in the shipping department. Such employees or officers do not come under this contract.

1. (b) Under approved safeguards, the workers of the Gernes Garment Company shall become and remain members in good standing of the I.L.G.W.U. through the said Local during the term of this Agreement.

1. (c) All manufacturing employees of the Company who have membership in Locals of the I.L.G.W.U., other than the separate local to be established in Kansas City, Missouri, shall become members of said separate local.

2. The parties hereto agree that the "time standards" and methods which have been previously established and approved in the Gernes Garment Company shall be continued.

3. (a) Where changes in the methods shall be deemed necessary by the Employer, such changes shall be subject to agreement with the Union.

3. (b) Where changes in conditions occur affecting previously established standards, new time standards shall be established by time studies.

3. (c) Check studies shall be taken where the workers feel that piece prices are not satisfactory. Such check studies shall be subject to the approval of the Committee of Workers of the respective departments.

3. (d) Instructions by the Company to the workers shall be issued when necessary on every new style and on each operation.

3. (e) It is agreed that any matter relating to any change in the then existing wage scale or rate of pay shall be taken up and considered by the Company and representatives of the Union in accordance with the procedure provided in this agreement and that such matters shall be taken up at a period between the 25th day of October and the 1st day of November annually during the life of this contract and that the wage scale or rate of pay thereby determined shall be the scale and rate which shall apply from November 1st of the year when considered until November 1st of the [fol. 5999] succeeding year. The present wage scale as outlined in this contract shall remain in force and unchanged until November 1, 1938.

In the event the parties are unable to otherwise agree as to any matter relating to said scale or wages, either party hereto may refer any dispute to arbitration and the determination of the arbitrator when reached shall be effective as of November 1st of the year in which the dispute arose, and thereafter as herein provided.

4. The Gernes Garment Company at all times herein mentioned is considered and regarded as a manufacturer of girls, junior high and sub-deb dresses.

5. During slack periods the available work in the different departments of the shop shall be divided on the same equitable basis as it is being done at present.

6. No worker shall be called in for less than one-half a day's work.

✓ 5

7. The parties hereto agree to observe a working week of forty (40) hours, and said hours to be divided among the first five (5) working days of the week. When overtime is deemed necessary by the employer such overtime work shall be permissible with the consent of the Shop Committee, overtime work to be paid for on the basis of regular wage scales and rate of pay.

8. The wage scale for female workers in the employ of the employer shall be not less than \$13.00 per week for a worker of normal efficiency and ability. The present prices for the piece workers shall remain intact and shall be based on a basis that not less than 75% of the workers in the different departments of the shop shall be able to earn not less than \$13.00 per week per capita. Female employees classed as "beginners" shall receive for their services not less than \$10.40 per week. The classification of "beginner" shall not extend as to any one worker longer than a period of six consecutive weeks. If after said period [fol. 6000] such worker shall be employed by the company she shall be classified on the same basis as the other workers.

9. The base rate for piece workers and the scale for cutters shall be determined with relation to the rate and scale in general effect in the industry as applied to local conditions and circumstances.

10. In all cases where strikes occur in other shops, that the workers in the employ of the Gernes Garment Company shall not be compelled to participate in any of the strike activities unless the majority of their local union decides to do so.

11. The Company shall have the right to discharge any worker for just cause.

12. The workers shall be represented by a Shop Committee consisting of not less than three (3) nor more than five (5) members. Such committee shall be elected by the workers from their own membership and no person shall

be eligible for election to such committee who has not been an employee of the Gernes Garment Company for at least one year next prior to election. The Chairman of this committee shall be the Shop Chairman.

13. Any dispute which may arise between the parties shall, in the first instance, be taken up outside of working hours for adjustment by the Employer and the Shop Committee. In the event of failure to reach a satisfactory adjustment by this method the disputed matter shall then be taken up between the Employer and the accredited representative of the General Executive Board of the I.L.G.W.U. Finally, in the event of failure to reach a satisfactory adjustment by these methods, the dispute shall be submitted for arbitration. Either the Company or an accredited representative of the General Executive Board of the I.L.G.W.U. may call on the arbitrator for the arbitration of disputes, said arbitrator to be selected by the parties hereto on or before July 1, 1937. The cost of arbitration shall be borne equally by the Employer and the Union.

14. The parties hereto agree that there shall be no strikes, sit downs, lockouts, or stoppages during the life of this Agreement for any cause whatsoever.

[fol. 6001] 15. This Agreement shall become effective the 1st day of July, 1937, and shall continue in force and effect until the last day of June, 1940, and shall be renewed from year to year thereafter unless at least thirty (30) days before the expiration of the terms, written notice is given by one party to the other terminating this Agreement, in which event the desired changes or modifications by the party seeking to terminate this Agreement will be made the subject of immediate negotiation between the parties.

16. This Agreement shall be binding upon the parties and their successors in interests, and the parties represent that they were authorized by their respective boards to enter into this Agreement.

In witness whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this 7th day of April, 1937.

GERNES GARMENT COMPANY,
By A. B. Gernes, Pres.

INTERNATIONAL LADIES'
GARMENT WORKERS' UNION,
By Meyer Perlstein,
Regional Director.

By David Dubinsky,
President.

Witnessed
Hugh L. Thomas
Wave Tobin

[fol. 6002] (Part of Respondent's Exhibit 2—Rejected.)

STATE OF MISSOURI)
COUNTY OF JACKSON) ss

This Contract made and entered into this ninth day of April 1937 by and between the Mayfair Manufacturing Company, a corporation located at 909-911 Broadway, Kansas City, Missouri, Camille Azar, an individual doing business at 1000 Broadway as the Camille Azar Company, and Theo Azar an individual, doing business at 1000 Broadway as the Camille Azar Company, and Theo Azar an individual doing business at 905 Broadway, as the Theo Azar Company, hereinafter called the "Employers" and the Joint Board of the Kansas City Locals, and the International Ladies' Garment Workers' Union, hereinafter called the "Union".

Witnesseth:

For and in consideration of the mutual efforts of the parties hereto to establish and maintain harmonious and satisfactory relations with respect to employment, wages, and working conditions in the plants of the Employers, the parties to this contract hereby agree as follows:

1. The employers agree to perform all of the provisions hereof, and observe all rulings and injunctions of the Arbitrator hereunder.

2. The Union in turn agrees for and on behalf of itself, the Joint Board, locals and individual members thereof, to perform each and every provision hereof, and to stand responsible for the performance of its members and each of them, both as to the provisions hereof and the rulings and injunctions hereunder as rendered by the Arbitrator hereafter provided.

3. The Employers agree to employ none but members in good standing of the International Ladies' Garment Workers' Union. All the employees at present in the employ of the Employers shall in a period of two weeks from the date of signing this agreement become members in good standing of the Union. In case the Employers are in need of additional workers they shall apply for such workers to the Union. Should the Union be unable to supply the Employers with the required workers, the Employers shall have the right to look for them elsewhere and after a trial period of three weeks if they remain in the employ of the Employers, they shall become members in good standing of the Union.

4. The Employers agree to divide the work equally and equitably among all the workers in the different departments of their shops. No worker shall be discriminated against and no workers shall be discharged unjustly.

5. The working week shall consist of forty (40) hours per week divided into the first five (5) working days of the week. During busy periods, when overtime work is necessary such overtime work shall be permitted, at the same rates of pay, but there shall be no abuse of this right of overtime work by the Employers.

6. Thirteen Dollars per week shall be the minimum wage for a female worker of average speed and ability.

6. (a) The piece rates for piece workers shall be set at a basis whereby not less than 75% of the female workers in the different departments of the shop shall be able to earn not less than Thirteen Dollars per week.

6. (b) The wage scale for female apprentices shall be not less than \$8.75 per week, for the first six consecutive weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

7. The butters shall receive an increase of not less than ten percent (10%) beginning June 30th 1937, above the wages they receive at present.

8. The piece rates for piece workers shall be agreed upon mutually by each of the Employers and a committee of not less than three and not more than five, selected by the Union from the Employees of each shop. The prices so set shall be fair and equitable. This price committee and the Employers shall meet weekly after working hours for the adjustment of piece rates. This section shall become effective June 30th 1937.

[fol. 6004] 9. There shall be in each shop of the Employers a Shop Chairman selected by the Union of the workers of each employer to adjust all grievances that may arise in the shop between the Employer and the workers.

10. There shall be no strikes, stoppages or lockouts during the life of this contract.

11. The Union and the Employers agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shops of the Employers.

12. Any and all complaints that may arise in any of these shops of the Employers between the Workers and any of these Employers or between the Union and any of these Employers shall at the first instance be taken up for adjustment between the Shop Chairman and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union, and each Employer. In case no agreement is reached, either of the Employers or the Union, shall have the right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by each Employer and an accredited representative of the Union within

48 hours from the time either of the parties will notify the other party that such arbitration is to take place.

In case any of these Employers and an accredited representative of the Union fail to agree on an arbitrator within 48 hours, either of the parties, the Union or any of these Employers, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

The decision of such arbitrator shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by each Employer and the Union.

[fol. 6005] 13. This contract shall be binding upon the parties and their successors in interest for two years from the date of this contract, and the parties represent that they were authorized by their respective boards to enter into this agreement.

In Witness Whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this ninth day of April, 1937.

MAYFAIR MANUFACTURING COMPANY

By.....(Pres.) signed

CAMILLE AZAR COMPANY

By.....

THEO AZAR COMPANY

By Theo. Azar

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION

By Meyer Perlstein
Regional Director

13. In all cases where strikes may occur in other shops the workers in the employ of the Employers shall not be compelled or encouraged to participate in any of the strike activities.

[fol. 6006] (Part of Respondent's Exhibit 2—Rejected.)

STATE OF MISSOURI)

ss

COUNTY OF JACKSON)

This agreement made this eighth day of April, 1937 by and between the Gordon Brothers Manufacturing Company, a corporation with its principal office in Kansas City, Missouri, and a branch factory located in Richmond, Missouri, hereinafter called the "Employer" and the Joint Board of the Kansas City Locals, and the International Ladies' Garment Workers' Union, hereinafter called the "Union."

Witnesseth:—

Whereas, the parties hereto desire to establish a standard of conditions under which the workers employed by the said Employer, shall be employed during the term of this Agreement, and

Whereas, the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure the workers a living wage and fair and reasonable conditions of labor, and to provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and general stabilization of the industry, to the honor and dignity of all parties concerned, as well as to the general welfare of the community at large, and

Whereas, both parties recognize that it is due to the consuming public whose patronage supports the industry as well as to the existence of the industry in Kansas City that all activities, decisions and arrangements growing out of this Agreement shall be based on the principles of true efficiency and the necessity for the lowest unit cost of production possible under the wage scales determined by this agreement.

Now, Therefore, in consideration of the mutual promises and obligations assumed, the parties hereto agree as follows:

1. All the workers employed by the Employer prior to the present strike shall be reinstated by the Employer

within two weeks from the signing of this Agreement without discrimination.

1. (a) The term "workers" used herein is understood to mean manufacturing employees; this is employees who are actually engaged in the making of garments.

[fol. 6007] The Agreement is not intended to cover any employees or officers who are not actually engaged in the making of garments and does not include, officers, executives, designers, assistant designers, superintendents, foremen, forewomen, office employees, or any employee engaged in the shipping department. Such employees or officers do not come under this Contract.

2. The Employer agrees to employ none but members in good standing of the International Ladies' Garment Workers' Union, all of the present employees of the Employer shall be given the opportunity to become members in good standing of the Union, at all times within a period of three (3) weeks from the date of signing this agreement. In case the Employer is in need of additional workers he shall apply for such workers to the Union. Should the Union be unable to supply the Employer with the required competent workers suitable and acceptable, to the Employer, the Employer shall have the right to employ non-union workers and after a trial period of four (4) weeks if such workers remain in the employ of the Employer they shall become members in good standing of the Union.

3. The Employer agrees to divide the work of the several departments equally and equitably among all the regular employees in such departments of the shop. No worker shall be discriminated against. The seasonal employees that are hired for seasonal employment can be laid off when and as their services are no longer needed. The Employer reserves the right to discharge any employee at any time for just cause.

4. The working week shall consist of forty (40) hours per weeks divided into the first five (5) working days of the week. During busy periods or when necessary on special work when overtime is deemed necessary by the Employer, such overtime work at regular prices shall be permitted, but there shall be no abuse of this right of overtime by the Employer.

5. Thirteen Dollars per week shall be the minimum weekly wage for a female worker of normal speed and ability.

[fol. 6008] 5. (a) The piece rates for piece workers shall be set at a basis whereby not less than 70% of the non-apprentice female workers in the different departments of the shop shall be able to earn not less than Thirteen (\$13.00) Dollars per week.

5. (b) The wages for cutters shall be not less than the wages received by them at present, the present male spreaders in the cutting department shall be paid at the rate of Twenty-Dollars per week beginning July first 1937.

5. (c) The wage scale for Apprentices shall be not less than \$7.75 per week for a girl for the first six weeks of her apprenticeship. After that period they shall work at the piece rate basis and be paid in accordance with their production.

6. The following special provisions of this paragraph apply only to all workers at the branch factory operated by the Employer, at Richmond, Missouri. The minimum weekly wage for a female worker of normal speed and ability shall be Eleven Dollars per week. The piece rate for piece workers shall be set at a basis whereby not less than 60% of the non-apprentices shall be not less than Six Dollars per week for a girl for the first six weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

7. No workers shall be called in for less than one-half a day's work.

8. The piece rates for piece workers shall be agreed upon mutually by the Employer and a committee of not less than three and not more than five, selected by and from the employees of the shop, known as the Shop Committee. Such committee shall be elected by the workers from their own membership and no person shall be eligible for election to such committee who has not been an employee [fol. 6009] of the Gordon Brothers Manufacturing Company for at least one year next prior to election. The prices

so set shall be fair and equitable. This price committee and the Employer shall meet weekly after working hours for the adjustment of all prices.

9. One member of the Shop Committee shall be its chairman, who shall represent the shop committee in all matters of any grievances that may arise in the shop between the Employer and the workers, any matter of grievance which cannot thus be speedily adjusted shall be considered by the employer and the Shop Committee as a whole.

10. There shall be no strikes, sit down, stoppages or lockouts during the life of this contract.

11. The Union and the Employer agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shop of the Employer.

12. Any and all complaints that may arise in the shop of the Employer between the workers and the Employer or between the Union and the Employer shall at the first instance be taken up outside of working hours for adjustment between the Shop Committee and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union and a representative of the Employer. In case no agreement is reached, either of the parties, the Employer or the Union, shall have a right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by Employer and an accredited representative of the Union within 48 hours from the time either of the parties will notify the other party that such arbitration is to take place.

In case the Employer and an accredited representative of the Union fail to agree on an arbitrator within 48 hours, after such notice, either of the parties, the Union or the Employer, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

[fol. 6010] The decision of any arbitrator so agreed upon and selected shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by the Employer and the Union.

13. In all cases where strikes may occur in other shops the workers in the employ of the Gordon Brothers Manufacturing Company, shall not be compelled or encouraged to participate in any of the strike activities.

14. This contract shall be binding upon the parties and their successors in interest for the period from July 1, 1937 to July 1, 1939, and the parties represent that they are authorized by their respective boards to enter into this agreement.

In Witness Whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this eighth day of April, 1937.

GORDON BROTHERS
MANUFACTURING COMPANY

Witnessed

INTERNATIONAL LADIES'
GARMENT WORKERS UNION

By
Regional Director

[fol. 6011] (Part of Respondent's Exhibit 2—Rejected.)

State of Missouri,
County of Jackson.

This Contract made and entered into this twenty-third day of February, 1937, by and between the Liberty Frocks Company, Incorporated, a corporation with its principal office located in Kansas City, Missouri, and a branch factory in Lexington, Missouri, hereinafter called the "Employer" and the Joint Board of the Kansas City locals and the International Ladies' Garment Workers' Union, hereinafter called the "Union".

Witnesseth:

For and in consideration of the mutual efforts of the parties hereto to establish and maintain harmonious and satisfactory relations with respect to employment, wages and working conditions in the plants of the Employer, the parties to this contract hereby agree as follows:

1. The Employer agrees to employ none but members in good standing of the International Ladies' Garment Workers' Union. All the employees at present in the employ of the Employer shall in a period of two weeks from the date of signing this agreement become members in good standing of the Union. In case the Employer is in need of additional workers he shall apply for such workers to the Union. Should the Union be unable to supply the Employer with the required workers, the Employer shall have the right to look for them elsewhere and, after a trial period of two weeks if they remain in the employ of the Employer, they shall become members in good standing of the Union.

2. The Employer agrees to divide the work equally and equitably among all the workers in the different departments of the shop. No worker shall be discriminated against and no worker shall be discharged unjustly.

3. The working week shall consist of forty (40) hours per week divided into the first five (5) working days of the week. During busy periods, when over-time work is necessary, such over-time work shall be permitted, but there shall be no abuse of this right of over-time by the Employer.

4. Thirteen Dollars per week shall be the minimum wage for a female worker of average speed and ability.

[fol. 6012] 5. (a) The piece rate for piece workers shall be set at a basis whereby a worker of average speed and ability shall be able to earn not less than \$13.00 per week.

5. (b) Workers of sub-normal productivity shall receive the same piece rates the rest of the workers receive and be paid in accordance with their productive ability.

5. (c) The wages for Cutters shall be not less than the wages received by them at present, Girl Spreaders in Cutting Department to receive \$1.50 increase above the wages received by them at present.

5. (d) Piece rates for the piece workers in the Lexington, Missouri, factory shall be the same as those set for the piece workers in the Kansas City factory and the workers shall be paid in accordance with their productive ability.

5. (e) The wage scale for Apprentices in the Lexington, Missouri, factory shall be not less than \$6.75 per week for a girl for the first six weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

6. The piece rates for piece workers shall be agreed upon mutually by a committee of not less than three and not more than five, selected by and from the employees of the shop, and the Employer. The prices so set shall be fair and equitable and be based on the productive ability of the average worker. This price committee and the Employer shall meet weekly for the adjustment of all prices.

7. There shall be in the shop of the Employer a Shop Chairman selected by the Union of the workers of the Employer to adjust all grievances that may arise in the shop between the Employer and the workers.

8. There shall be no strikes, stoppages or lockouts during the life of this contract.

9. The Union and the Employer agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shop of the Employer.

[fol. 6013] 10. The Employer agrees that for ninety (90) days from date of this contract all garments produced by the Employer shall bear the Union Label, and that thereafter the use of Union Label shall be optional with the Employer. This Union Label is owned and controlled by the International Ladies' Garment Workers' Union and the Employer shall purchase this Label from this Union at a price of \$1.00 per thousand Labels. The Label shall be under the control, in the shop of the Employer, of a Label custodian named by the Union. The International Ladies' Garment Workers' Union obligates itself to widely publicize the garment produced by the Employer bearing the Union Label.

11. Any and all complaints that may arise in the shop of the Employer between the workers and the Employer or between the Union and the Employer shall at the first in-

stance be taken up for adjustment between the Shop Chairman and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union and a representative of the Employer. In case no agreement is reached, either of the parties, the Employer or the Union, shall have a right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by Employer and an accredited representative of the Union within 48 hours from the time either of the parties will notify the other party that such arbitration is to take place.

In case the employer and an accredited representative of the Union fail to agree on an arbitrator within 48 hours, either of the parties, the Union or the Employer, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

The decision of such arbitrator shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by the Employer and the Union.

[fol. 6014] 12. This contract shall be binding upon the parties and their successors in interests for one year from the date of this contract, and the parties represent that they were authorized by their respective boards to enter into this agreement.

In Witness Whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this twenty-third day of February, 1937.

LIBERTY FROCKS COMPANY,
INCORPORATED,

By A. B. Passman, Pres.

INTERNATIONAL LADIES'
GARMENT WORKERS'
UNION.

By Meyer Perlstein,
Regional Director.

Witnessed:

Floyd E. Jacobs
Wave Tobin

[fol. 6056] (Stipulation relating to Intervener's Exhibit
20—Rejected)

United States of America

Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and

International Ladies' Garment Workers' Union
and

Donnelly Garment Workers' Union,

Party to the Contract

Case No. C-1382. (XVII-C-371)

It is hereby stipulated by and between Donnelly Garment Company, by R. J. Ingraham; Donnelly Garment Workers' Union, by Frank E. Tyler; International Ladies Garment Workers' Union, by Clif Langedale; and Marion A. Prowell, attorney, National Labor Relations Board, Seventeenth Region, as follows:

Photostatic copies composed of thirty-seven (37) pages of petitions, introduced in the above-styled matter as Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive, having been lost, it is hereby stipulated and agreed that the photostatic copies attached hereto composed of thirty-seven (37) pages are true and correct copies of Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive, referred to on pages 3041 to 3046 of Volume 26 of July 14, 1939, of the transcript of the above-styled matter heard at Kansas City, Missouri.

It is further stipulated and agreed that the thirty-seven (37) pages of the attached are true and correct photostatic copies of the documents originally introduced as Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive.

[fol. 6057] It is further stipulated and agreed that the thirty-seven (37) pages of photostatic copies attached hereto shall be, and hereby are, by agreement of the parties, substituted for Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive, which has been lost.

It is further mutually understood and agreed that this stipulation and the attached photostatic copies shall be forwarded to the National Labor Relations Board, Washington, D. C., to be included in and made a part of the transcript and the exhibits in the above-styled matter.

Dated this first day of July, 1940, at Kansas City, Missouri.

DONNELLY GARMENT
COMPANY,

By R. J. Ingraham,
Its counsel

DONNELLY GARMENT
WORKER'S UNION,

By Frank E. Tyler,
Its counsel

INTERNATIONAL LADIES'
GARMENT WORKERS'
UNION,

By Clif Langsdale,
Its counsel

MARION A. PROWELL,
Attorney
N.L.R.B., 17th Region.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Witness, Farmers Company, or the Donnelly Garment Sales Company.

Frances Atkinson

Cordis Humbley

Louise Robinson

Grace Miller

Lucinda Moore

Pearl Black

Clara Hughes

Chas. M. Laughlin

Lucy Evans

Martha Ward

Lutie James

ORA Johnson

Missie Vickers

Maria Patton

Louise Johnson

Ethel Carpenter

Anne L. Moller

May Proctor

Laura Perry

Ada Vining

Vida Gordon

Amy Apperson

Maud Ogball

Nellie Stites

Rogers Plattner

Lois Hall

Emma Hansen

Idell Remmel

Jane Beal

Mary Alice Hardin

Bertie Lafferty

Iva Andrews

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

1677

6058

4.
STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Donnelly Garment Company or the Donnelly Garment Sales Company.

Dorothy Greenwood
Mrs. Rockford
Lynne Davis
Roberta McClanahan
Mamie Carlson
Margaret Howard
Bertha Richardson
Vera Gilardi
Lena E. Hubbard
Audrey Bechtel
Susan Winters
Lillian Stearns
Ethel Riegel
Lenaie Brown
Wella Flannery
Bernice Winburne

Kathryn Chandler
Nettie West
Evelyn Tressy
Eleanor Miller
Helen Myers
Katherine Horat
Katie McTearney
Beatrice Foss
Annelie Webb
Minnie Jones
Edna Rawlings
Ruby Grader
Irene Ross
Gladys Ridd
Anna Lee Spahr
Elsie A. Wright

Subscribed and sworn to before me this 31st day of May, 1939.
My commission expires July 14, 1941

Forace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

1679

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Anna Reese
Lela Stevens
Edith Dean
Nell Prime
Augusta Yates
Patricia Russell
Ruth Lones
Lattie Lawrence
Lula Phillips
Virginia Waco
Ann Murray
Mable Bracy
Anna Huxley
Flora Taylor
Georgie Lamm
Grace Hamilton

Ada Lee Hunt
Irene Rush
Lena Carlson
Emma Shaw
Angie Brazel
Rebecca Danks
Etta Zimmerman
Beard Logan
Bessie Calark
Bessie Coates
Evelyn Gordon
Lola Skeens
Mable Forster
Alpha Renner
Ruth Hayes
Ora Brown

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Forbes B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

ss

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

THE SIGN OF MAKING THIS STATEMENT AS A bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Pauline Hartman
Oma McDonald
Florence Russell
Jess Collins
Margaret Linn
Amy Lou Osterheld
Helen Olson
Cecilia Wintercheidt
David Green
Robert Liveray
Hella Willis
Vesta Lison
Katherine Ruppert
Virginia S. Harper
Eleanor Lodwig
Mayone Green

Sam Sparks
Mary Apperson
William Phewler
Homer Stuart
Ruth Alexander
Lula Weddell
Florence Eber
Mary Hansack
Martha Sandy
Gilbert Kamp
Helen Mumlock
Hustan Anderson
Earl H. Hoffmann
Harvey Edwards
W. S. Riley
W. J. Stickle

Subscribed and sworn to before me this 6th day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

7.
STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

H. Bezeel
Ellie Fraser
Henry Root
Al. Stuart
Elizabeth Sanford
Margery McNeill
Carl Crawford
Heber Taylor
Rosa Perry
Odell De Gault
Mary Capaway
AB Clarke
Luis Barnes
Edith Smith
Lena Allison
Mary Myers

Rhoda Jackson
Bulah Bunch
Mary Margaret Griffith
Matty Jackson
Edna Rice
Yelma Humphrey
Elayne Allright
Alice Scott
Willie Cook
Fannie Browning
Annie Sampson
Lena Kerr
Mamie Bartell
Lillian Lewis
James Van Camp
Mary Schutte

Subscribed and sworn to before me this 6th day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

8
STATE OF MISSOURI

SS
COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Lillian L. Owen
Mabel Spillhouse
Minnie Fisk
Helen Herring
Nellie Lynelton
Ora Wachtel
Cora Fitzwater
Rose O. Leary
Lorothy Oakley
Mavis Jameson
Bulah Hurdle
Margaret Dickson
Eleanor Downing
Theresa McHenry
Randall Brockman
Earl Wheeler

William L. Jackson
L. Helen O'Brien
Glenn Travers
Ann Miller
Frederic Orath
Blair Hamilton
Maryrie Thence
Kathryn Jordan
Kenneth Smith
Kathleen Anapach
Sarah Perry
Eva Fowler
Elizabeth Butler
Samuel Maxwell
Walter Schone
Katherine Bello

Subscribed and sworn to before me this 6th day of June, 1939.

My commission expires July 14, 1941

Forace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Ruby Williams
Etha Dorsey
Gladys Bander
June Parks
William Hargreaves
Edith Hickman
Lillian Richards
Vera Kind
Bertha Cook
Kathleen Dengel
Harley M. Ferguson
Garnet Hoffman
Rose Bryan
Martha Gray
Lavinia McMillan
Katherine Hamel

Sam Griggs
Ada Wolfe
Edward Cook
Elizabeth Campbell
Emilia Vance
Minnie Storm
Donahy Riggs
Ruth Lewis
Bessie Estes
Carrie A. Cochran
Michel Bayless
June Scott
Margaret Luce
Clara Finnell
Kathryn Howe
Dorothy Perry

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Wm. B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company,

Marie Albano
Ruth Massis
Roberta Blaine
Evel Harris
Mary Rose
Pearl Henry
Dolphine T. Babbitt
E. J. Rife
Mr. Wm. P. Brady
June Swanson
Clare Phelps
Kathryn Rosen
John T. Fure
Old Lant
Florence Newisser
Bernice Anderson

Norathy Lewis
Mary Lannon
Billie Smith
Jessie Farrell
Opal Halliday
Grace Grista
Nora K. Witten
Earl Martindale
Alvin Hill
Myrtle Rindling
Donald M. Lytle
J. B. Casperson Jr.
Carrie Brian
Mary Kobeco
Hazel Rhens
Cora Ewari

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

ss

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Leona Cooper
Mary Shimpough
Christine Sargent
Mary Clark
Helen M. Miller
Clara Stubbbs
Mary Budebnick
Maud Hamilton
Rose Lee Greeley
Elena Jennings
Minnie Batmahr
Wabe Rieley
Verna Harrison
Cora Kalick
Sarah Hrencher
Helen Shultz

Alta Kramke
Murphy White
Lillian Farrell
Jewell Howard
Della Harrison
Nolan Reardon
Thelma Emerson
Lorene Douglas
Carolyn Stubbbs
Guth E. Pileas
Vera Gorman
Frances Dumit
Grace Davis
Freda Smeltzer
Nell M. Hogg
Edith Schaefer

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1945

Notary Public in and for said county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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Donnelly Garment Company *Donnelly Garment Sales Company*

coercion, persuasion or pressure of any sort, and that at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Effie Canfield
Mary George
Lula Meyers
Ruby Torgert
Bess Phillips
Annette Stewart
Jo Chapman
Blanche Benson
Gladys Lester
Nellie Barton
Carnie Deach
Rhoda Jackson
Carrie Scott
Agnes Kendall
Minnie Allen
Bonnie Velghe

Vivette Bennett
Lorraine Smith
Audrey Worsdow
Edith Hicks
Emma Hargus
Gladys Brimmer
Alice Maggio
Doris Appill
Maxe Flusht
Julia Fire
Iva Campbell
Daisy McVaul
Rose Campbell
Dimple South
Gertrude Wight
Hazel Bradshaw

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14 1941

Wm. B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

1695

13
STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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E. L. Rhine

coercion, persuasion or pressure of any sort, and that at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Norma Laerber
Beulah Hayhurst
Ellen Rurtah
Nina Stewart
Robt. W. Combe Jr.
Anna Richards
Louis Schrader
Ruth Newkirk
Louise Sany
Alice McCray
Ann Mowry
Edith Williamson
Mayone Tucker
Beaile Smith
Julia Arwin
Lopha Glanvick

Ebene Phillips
Helen Lee
Seal McCoy
Georgia Elliott
Cyril Batton
Francis Foster
Lena Berry
Edna Robinson
Helen Clarke
Mamie Weeks
Alice Baggerly
Gene Layberry
Emma Cornell
Mary Burrus
Ula Crawford
Mary Brault

Intervener's Exhibit 20 - Rejected.

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

14
STATE OF MISSOURI

ss
COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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11 1 1 8-1-41

the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Anna Gordon
Anna Harvat
Alice Beil
Ruby Eberston
Grace Campbell
Irene Churchill
Maria Nighy
Bessie Delaney
Audrey Hoyle
Eva Broyles
Bessie Taylor
Olive Kopp
Flora Bowen
Bessie Kalinick
Lillian Frohock
Viola Welch

Edith Voorhes
Zona Hayes
Evelyn Pemberton
Paula Freeman
Olivia Palmer
Margaret Young
Effie Lake
Mary Festich
Bertha Nicoll
Myrtle Stewart
Belle Wise
Verna Jones
Luis Callowick
Louise Stockton
Paula Bowman
Florence Lippold

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Robert B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

154

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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[Handwritten signatures and initials follow]

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Mary Hamburg
Ray Brumby
Martha Pallanish
Father Johnson
Rose Henriks
Bessie Taylor
Bertie Johnson
Nellie Starr
Elsie Holtrick
Margaret Shuteby
Glenia Basler
Martha Hays
Glenette Redman
Ruby Boyles
Lillian Berger
Ruth Broadus

Bessie Redman
Ruth Bunnell
Lena Pittman
Rose Callowick
Nina Bartles
Florence Belcher
Evel Wicks
Margaret Kellog
Louella Sars
Hazel Endow
Helet Caven
Mary L. Crawford
Doris Collins
Myrtle Campbell
Doris Maxwell
Wilbur Kroyer

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employee of, the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Mildred Brooks
Pearl Fields
Gladys Austin
Alta Stevenson
Katherine Lutzow
Ruby Welch
Maud Vickers
Gris Litten
Flora Quinn
Rada Walker
Boyd Mumford
Virginia Bryson
Jesus Samflitz
Betty Cheneys
Bernice Hull
Helen Shumate

Lucile Wiley
Minnie Compton
Lena Canaday
Nellie Boon
Beulah Harrison
Mrs. Hazel Jones
Virginia Lane
Ollie Reiman
Daisy Kirby
Opal Richardson
Margaret Legg
Fannie Lockwood
Mabel McLean
Laura Hyman
Evelyn Stover
Helen Bond

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires

July 14, 1941

Francis B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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S. B. N.

Subscription, personation or presence of any sort, and that applicant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Betty Griffith

Josephine Smith
Carrie Wright

Mary Davis Gordon

Opal Stufflebeam

Martha Loman

Emma Groves

Hilda Brewer

Augusta Gordon

Cladip Brando

Una Mattos

Dolly Otis

Naomi McQuiston

Ruth Eastman

Dessie Dorak

Alta Hinkle

Lois M. King

Rose Strand

Goldie Cole

Violet Taylor

Cyrus Hutchinson

Edna Shipman

Opal Chance

Beulah Perkins

Zella Fisher

Emma Harris

Augusta Foster

Nelie Bilyeu

Betty Griffith

Martha Jackson

Mary Ann Gustin

Kathryn Baldwin

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Horace B. Powell

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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7/0 1.7

the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Nellie Pigg
Pearl Hogan
North Haroff
Pearl Hall
Sallie Crinsby
Bendake Light
Zandickson
Maudie Mahell
Orel Head
Edith Koll
Maggie Brown
Lurel Garrett
Ruth Putnam
Ethel Bingman
Grace Dinkap
Sarah Louche

Oliver Walton
Mary Hyle
Lucille Brown
Loretta Mae
Martha Haase
Ina Davidson
Elie Williamson
May Ingold
Stella Baldwin
Stella McKinney
Anna Sarski
Anna Murphy
Laura Hill
Hosea Catten
Vivian Nelson
Mildred Burick

Subscribed and sworn to before me this 3rd day of May, 1939.
My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state

Intervener's Exhibit 20 - Rejected.

19.
STATE OF MISSOURI

ss
COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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211

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

James Hinson
Clara Loeth
Regina Shuman
Helen Vest
Frances Harley
Jack Kennedy
Adam McDonald
John Ferretto
Marion Bennett
Evelyn Jones
Lucy Muller
Louise Weber
Hattie Cordes
Mary Hester
Hattie Fuller
Mary Hirsch

Margaret Draine
Cashmere Stahl
Velma Merrill
Merle Page
Mary B. Scott
Thelma Scharf
Gene Thibault
Virginia Wainwright
Mildred Snyder
Helen Lisch
Bertha Fied
Goldie Grossman
Robt. Lisch
Mary E. Whitaker
Neen Hays
Elena Curry

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

• STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Eleanor Sargent
Gertrude Dora
Bessie Shaw
Betty Davis
Katherine Lister
Miss Smith
Mabel Truer
Mary Ward
Jessie Waples
Oliver Corney
Ruth Clayton
Jessie Davis
Alpha Clinton
Clair Martin
Corinne Blackwood
Laura Plummer

Edna Geer
Anna Kelly
Charlotte Gandy
Lora Herring
Esther McCurry
John J. Bodwell
Myrtle Armstrong
Lessa Craig
Blanche Forbes
Heath Cowan
Carl F. Lohr
Virginia White
Eileen Gray
Mildred Tebbel
Dixie May
Doris McConkey

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14 1941

Francis B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Bessie Winner
Ruby Rickett
Ruby Lagg
Suzette Thayer
Agnes Nibbel
Bessie Boag
Therese Derak
Lucy Cox
Helen Donnelly
Hazel Hardman
Anna Wyfosh
Nora Johnson
Bessie Weibert
Jewel Toller
Cora Raines
Hazel Higgins

Jessie Meade
Lela Chase
Pearl Boywark
Bernice Bryant
Margaret Hunter
Wilma Knox
Katherine Hardsaw
Virginia Ellison
Ethel Hardner
Josephine Nichols
Barbara Steyer
Lois Keisinger
Edith Cameron
Sadie Wambs
Blanche Shelton
Harriet Duck

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires

July 14, 1941

Horace B. Powell
Notary Public in and for said

Intervener's Exhibit 20 - Rejected.

22
STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Georgia Ward
Norothy Easter
Wilma Kile
Ruth Ellen Baldwin
Ella Chase
Elizabeth Fromholt
Louis Broder
Geneva Copeland
Ruth E. Davidson
Maudie Capenhaver
Paul Harris
Catherine Plummer
Bess Jacob
M. B. Briggs
Doris Emig
Hinton Notland

Mary Hall
Mark Andrew
Ruth Anderson
John T. Brist
Leath Wilson
Lucille Arden
Mavis Loring
Mildred Foster
Mary Smedden
Mary M. Clellan
Bulah Kelley
Frances M. Amaley
Mary Sue Cook
Rhoda Hauck
Mabel Haven
Alice Caten

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires

July 14, 1941

Horace B. Powell
Notary Public in and for said

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Louise Pimbert
Brenda
Nora Wilhauer
Mollie Smith
Bondie Baker
Elsie Hansen
Lela Brown
Ira Mueller
Bob Kirk
Bill Foster
Lloyd Lyman
Cameron Harold
Julius DeGure
Frank Stearns
Ray S. Bell
Nela Moran

Lucille Turner
Dolly Bate
Anna Price
Frances M. Keith
Lula Nichols
Nannie Barger
Gertrude Cain
Lucille Secklin
Thelma Dickson
Ruth Jean Day
Jacqueline Ward
John H. Hightman
Chris Brooks Brant
Ben James
Paula Martindale
Clifford C. Basing

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Thomas B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Mary Self
Edith L. Lifford
May Pitts
Ethel Lifford
Ruth Varis
Gladys Steger
Lucy M. Culler
Helen Gail
Martha Wilson
Anna Farmer
Margaret E. Turner
Marie Wendenick
Jeannine Forester
Fred Jacobs
Rhea Byars
Harold Boyd

Ronald Morell
Sara Tchen
Bessie Rudy
Helen Garry
Frances Cooper
Edna Morlan
Martha Lifford
Ethel Maxwell
Frank Cooper
Iola White
Grace Berry
Bessie Lifford
Raymond T. Smith
Kathleen Bateman
Frances Endley
Helen Angold

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Thomas B. Lowell
Notary Public in and for said

Intervener's Exhibit 20 - Rejected.

25
STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Bernice Davis
Theresa Truine
Inez Munkel
Cassie McClurg
Ann Perry
Dora G. Holder
Mary Ann Keene
Flora Cox
Lemora Buege
Charlotte Awise
Grace Briscoe
Nina Collins
Anna Cummings
Myrtle Johnson
Grace Miller
Florence Moore

Della Drummakom
Jaki Rust
Nettie Barnett
Ruth Wilson
Fred Ellis
Opal McLeod
Marie Halliday
Ethel Hays
Annette Wilson
Harry Kroger
Rose Todd
Helen Robinson
Mary Mestel
Lucy Hall
Dorothy Roberts
Nancy T. Beach

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 17, 1941

Thos. B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

26.
STATE OF MISSOURI

88
COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Arthur Rigdon
Hilda Fisher
Charles Speaker
Anne Belan
Nolan Mahon
Emma Davis
Shirley Gales
Doris Brown
Christine Messitt
Orval Gould
Lena Vanderhoff
Grace Hendrix
Kathryn Sprague
Jessie Friesz
Augusta Katherine
Maria Jackson

Margaret Etzel
Hattie Crandell
Dorothy Clements
Gertrude Adams
Glenn Bingham
Mary Mercier
Evelyn Vassar
Eva Lee Brown
Anna Moore
Robert L. Robertson
A. D. Scott
Hazel Keflogg
Jessie Black
Charles Whittier
Clara Wagner
Maudel Roberts

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

172

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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M i . . .

coercion, persuasion or pressure of any sort, at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Mildred Kuhlberg
Lora Fritz
Carmen McDermott
Madge Wilson
Leona Brunk
Agnes Lenzgorn
Elizabeth Gubants
Eulah Carter
Myrtle Cox
G. H. Jones
Valeria Booth
Ethel Hunkley
Ethelyn Robinson
Deborah Albough
Bessie Neimoyer
Edna Troutman

Edna Davis
Grace Hampton
Laura Colley
Dorinda Lohr
Madge Cole
Verna Reed
Helen Reagin
Dora Tuttle
Edna Mae Tuning
Ted Rutland
George Hall
A. A. Wren
Amy Steadling Larnes
Lanette Lanning
Clara LaBrash
Lucille Briggs

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Notary Public in and for said county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Hera Marshall

Elmer McThee

Diana Rutherford

Lyle Jeter

Godwin Gersert

Wood Reynolds

Flora Strickland

Elean Hughes

Jack W. Langley

Anna Taylor

Alie Bennett

Harold J. Jeter

Emmeline Voorhis

Subscribed and sworn to before me this 3rd day of June, 1939.

My commission expires July 14, 1941

Thrace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

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11-10

coercion, persuasion or pressure at any time during the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

George Hallis
Anne Budelnick
James O. Reese
Lena Carpenter
Mary Cusick
Louise Lehman
Catherine Nold
Jaydene Gidney
Freda Schweiger
Betty Clifford
Phinnas Peterson
Nell Crossick
Thomas M. Keeney
Lawell Jackson
Shyman G. Lutz
Lyda E. Burns

Catherine McCarty
A. Brown
Maudie Maack
Regina Stearman
Martha Klappner
Nola Lude
Helen Europe
Don E. Reid
E. J. Donnelly Jr.
Theresa Ellen Gully
Ruth Austin
Helmer A. Jensen
Jurnal McFadden
Opha Baber
Elaine Watson Klamburg
Hilda Richmond

Intervener's Exhibit 20 - Rejected.

Subscribed and sworn to before me this 3rd day of June, 1939.

My commission expires

July 14, 1941

Horace B. Powell

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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R. M. D.

the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

~~Frances M. Collins~~

Grace Stephens

Hallie Chenham

J. H. White

Gertrude Collins

Eucelle Evans

William Price

Marie Ashley

Charles B. B. B.

Pauline M. M.

Margaret M. M.

Vendae R. R.

Christine E. E.

John A. A.

Marnie Riddle

Doris Gailbach

Grace M. M.

Opal Dumsky

Edith Dean

Poland Frost

Georgia Bailey

Ella Smith

Catharine Atkinson

Elizabeth Goodman

Iveta Dixon

Bertie Kline

Neil Beatz

Rosetta Cook

Natie Schleicher

Lena Lewis

James R. Dunn

Verna Allison

Subscribed and sworn to before me this 3rd day of June, 1939.

My commission expires July 14, 1941

Forace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

31.
STATE OF MISSOURI

ss
COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Beatrice Robinson
Myrtle Quinn
Margaret Lane
Pearl Atkinson
Lillian Lubben
Irene Russell
Georgia Foster
Chal Sheptaw
Cerese Pinsky
Ann King
Dellie Gillham
Katherine Keely
Lama Wise
Nettie Ely
Agnes Starkman
Pearl Douglas

Mary Pfeil
Beth Sheld
Lorene Kordke
Antonie Kelder
Mary Jo Thomas
Opal Dobbs
Zola McNeil
Carrie Fain
Norma Pearson
Laura Lee Joyce
Mahess Harvey
Lillian White
Mary Halers
Mary Dockery
Dorline Kammner
Lima Lile

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

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STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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P. 10

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Pearl Davis
Dale Bennett
Harriet O'Leary
Paul Oliver
Leslie Ward
Lena Simon
Ruth Hartness
Virginia Woods
Lena E. Funderburk
Carolyn Grace
Peggy Hill
Emily Fisher
Sadie Comer
Margaret Daley
Grace Skinner
Irene Wittman

Classic Massman
Elena Cannon
Lena Harrison
Mable M. Riggs
Gertrude Greaves
Catherine Buegan
Betty Chieff
Dorothy DeLong
Margie Stacy
Lena White
Charles Lamb
Matilda Jackson
Violet Sull
Florence Helm
Elizabeth Day
Velma Woolley

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Nevra Dennis
Mable Sedentand
William Deale
Killing Lead
Mary Crume
Martha Pollock
Ceva Vaughn
Jimell Jones
Martin Rued
Leah Shields
Anne Cruse
Alayne Shouts
Helen Wilson
Anne Vighando
Josephine Demigan
Anna Pitcock

Aileen Vogt
Dorothy Lyzola
Enclijn Lewis
Thelma Lilly
Mary Ridd
Artie Vaught
Myrtle Keidel
Nannie Lee Bullack
Nell Wheeler
Linda Crum
Agnes Lent
Flance Moore
Berta Watson
Jean Kirk
Dorothy Mead
Blanche Thornton

Intervener's Exhibit 20 - Rejected.

Subscribed and sworn to before me this 2nd day of June, 1939.
My commission expires July 14, 1941

Forace B. Powell
Notary Public in and for said
county and state.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

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S. J. D. ... *John B. ...*

coercion, persuasion or pressure of any sort, and that at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Edith Alexander

Pearl Fisher

Anna Dull

Ida Bachman

Grace Williams

Joseph Lubick

Katherine Bodine

Marie Drouse

Dale Stark

Nina Abrahamson

Virginia Vassar

Minnie Gage

Ida Mank

Caroline Atkins

Carrie Adams

Joseph Taylor

Kell Ball

Kestud Day

Catherine Kellogg

Winnie Underwood

Lena Krepps

William Blatter

Donna Kisker

Margaret Adams

Helena Haffette

Jessie Kelly

Laura Watson

Mary Stewart

Bessie Carson

Myrtle Willis

Nell Patrick

Gertrude Willey

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell

Notary Public in and for said
county and state.

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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Donnelly Garment Company or the Donnelly Garment Sales Company.

Evel Brewster
Adeline Bailey
Idene Carr
William Fay
Ellen Nokes
Nettie Womack
Pearl Mayte
Lucile Ward
Allene Jones
Helen Hauser
May Steven
Maurine Kavanaugh
Myrtle Wilkins
Nellie Colley
Rosalie May
Lucile Eddy

Mildred Reese
Walter Higgins
Mary Williams
Ock Gordon
Barbara Eckert
Evelyn L. Cook
Dorothy Embury
Ruby Shankard
Adah Saunders
Corinne Robinson
Dora Levisely
W. G. Gaudin
Mildred Love
Hazel Donovan
Leona Moore
Clyde M. Davidson

Intervener's Exhibit 20 - Rejected.

Subscribed and sworn to before me this 22 day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said
county and state.

STATE OF MISSOURI
COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Nova Gray
Bertha Newham
Bessie Danson
Fannie Melton
Margaret M. Edwards
Para Long
Grace Farrell
Elizabeth Selva
Helen Sunderman
Nancy Rogers
Alice J. Gates
Margaret Broder
Mary Walker
Isabel Ambler
Lois Cassin
Edna Biebert

Donnelly Hill
Bessie Hilland
Ruby Vadickson
Louisa Doughty
Anna Haggelman
Myrnell Hutton
Elna Walker
Virginia Juby
Mary White
Ruby Kennedy
Quilak Bond
Margaret Taylor
Millie J. Eli
Margaret Rahmann
Etha Kelley
Dorothy Faye

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires

July 14, 1941

Francis B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

1743

6091

6091

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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Donnelly Garment Company or the Donnelly Garment Sales Company.

Nora Stevenson

Vivian King

Pearl Rits

Ruth Noll

Anna Fountain

Emma Warren

Louise Pritchett

Ethel Mae Haskins

Josephine Spahr

Dorothea Dankenbring

Irene Hayward

Effie Whigand

Mable Beale

Julia Smith

Ethel Everett

Esther Kramer

Mary Sites

Cassie Kent

Bessie Laddell

Mary Overly

Janita Wallace

Blanche Wilson

Dorothy Leavelle

Alice Murphy

Ethel Pittelli

Lillian Travers

Emma Goulet

Elizabeth Bennett

Ma Jewett

Pearl Boden

Ethel Butler

Annie Jones

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Forace B. Powell
Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

1745

6092

STATE OF MISSOURI

COUNTY OF JACKSON

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employee of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Mary Hutchison
Adele Lide
Vernie Skinner
Freda Caudle
Charles Stetson
Alta Miller
Verla Selby
Anna Hartman
Josephine Miles
Mildred Harrison
Mary Wagner
Margaret McCordombie
Cora Vernon
Ruth Ackerman
Hazel Johnson
Lory Williams

Stella Anderson
Dorothy Fox
Elizabeth Stewart
Selma Johnston
Emma Kellogg
Blenda Hall
Katherine Fance
Ethel Bogan
Gladys Russell
Mary Lane
Jessie Bracy
Mary Lee O'Brien
Elizabeth Benson
Opal Mansfield
Opal Cox
Pearl Bennett

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires

July 14, 1941

Horace B. Powell

Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

COUNTY OF JACKSON.

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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9/11/54

the time of making this statement is a bona fide employe of the
Donnelly Garment Company or the Donnelly Garment Sales Company.

Helen Gutz
Ruth Costa
Lillian M. Stearns
Kell Harper
Johanna Hunter
Velma Hoef
Olga Smith
Edna Flynn
Mary Cox
Velma Lee Elgin
Eva Berning Brown
Edythe M. Hughes
Mildred Hale
Margaret Kline
Allice Freed
Sallie Deaney

Rene Leach
Louise Henning
Opal Fugle
Ethel Jones
Ruby Howell
Hennie Bress
Elva Taylor
B. Leach Leach
Sue Cleary
Margaret Kelly
Rose Mahoney
Ruby Kitchen
Jella Hemme
Mildred Snare
Edna Tatterhall
Hilda Beals

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires

July 14, 1941

Horace B. Powell

Notary Public in and for said
county and state.

Intervener's Exhibit 20 - Rejected.

1749

[fol. 6099] (Board's Exhibit 1-SSSS.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region

In The Matter Of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union,
Party To The Contract
Case No. XVII-C-371

Rulings Of The Trial Examiner

1. In this statement of rulings, the Donnelly Garment Company is referred to as the respondent; Donnelly Garment Workers' Union as the intervener; and the International Ladies' Garment Workers Union as the Union.

2. On July 15, 1939, the hearing in the above entitled matter closed for the taking of oral testimony. In the record of June 15 (pages 3098 to 3116), certain exhibit numbers were reserved for the submission of offers of proof, testimony to be offered from the National Recovery Administration case and Judge Miller Federal Injunction case, and other matters. All matters having been submitted and made a part of the record, the undersigned makes the following rulings thereon:

(a) Board Exhibit 28, by stipulation a true and accurate reflection of the facts and figures of all of the respondent's time-workers' pay-roll records to whom it purports to refer for the period April 15, 1937 to July 15, 1937, will be received in evidence. (Board Exhibit 1-uuuu is respondent's objection to Board Exhibit 28).

(b) Board Exhibit 1-tttt is a motion to amend the amended complaint. The motion is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion to amend the amended complaint). Board Exhibit 30-e, a [fol. 6100]. motion to amend the offer of proof, provid-

ing the motion to amend the amended complaint is granted (Board Exhibit 30) by inserting a paragraph, is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion to amend the offer of proof.)

(c) Stipulation of the parties making no objection to Board's motion to conform the amended complaint to the proof. Motion is granted. The stipulation is hereby made a part of the record and designated as Board Exhibit 1-vvvv.

(d) Stipulation of the parties providing for the filing of an offer of proof by respondent. The stipulation is hereby received and made a part of the record and designated as Board Exhibit 1-www. The offer of proof attached to the stipulation is hereby made a part of the record and designated as Board Exhibit 1-xxxx. The offer is refused.

(e) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 6, reserved ruling on the Union's motion (Board Exhibit 1-qqq) to strike certain parts of respondent's answer and requested respondent to file offer of proof with respect to the motion to strike. The motion to strike is granted.

(f) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 7, requested the respondent to submit offers of proof on Parts A and B of respondent's answer (Board Exhibit 1-jjj). The respondent stated in the record that no offer of proof would be made on Part A of the answer. The request for dismissal of complaint in Part A of the answer is denied. The offer of proof submitted by the respondent on Part B of the answer is refused. (Board Exhibit 1-nnnn.)

(g) Respondent's offer of proof, Board Exhibit 1-jjjj, was submitted because of a definite ruling of the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(h) Respondent's offer of proof, Board Exhibit 1-oooo, was submitted because of a definite ruling by the Trial Examiner as to the admissibility of certain evidence, and

in so far as the offer contemplates matters barred by the [fol. 6101] ruling, it is refused.

(i) Intervener's offer of proof, Board Exhibit 1-rrrr, was submitted because of definite rulings by the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(j) Board's objections to NRA-JMC Exhibit 3, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(k) Board's objections to NRA-JMC Exhibit 8, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(l) Respondent's objections, Board Exhibit 1-uuuu, Part 4, to Board's and Union's NRA-JMC Exhibit 17, is overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(m) Respondent's offer of evidence (NRA-JMC Board Exhibit 17) from the record in the Judge Miller Federal Injunction proceeding is received without objection. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(3.) Board Exhibit 1-ssss was reserved for the "Rulings of the Trial Examiner" and Board Exhibit 1-ssss is hereby made a part of the record.

(4.) You are further advised that the hearing in this matter is closed. Dated: August 14, 1939.

JAMES C. BATTEN
Trial Examiner

[fol. 6175] (Statement of Exceptions of Intervener, Donnelly Garment Workers' Union, to Trial Examiner's Intermediate Report.)

United States of America

Before the National Labor Relations Board

Seventeenth Region

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Workers' Union, Party to the Contract

Case No. XVII-C-371

[Intervener, Donnelly Garment Workers' Union (referred to in the intermediate report as the Independent), objects and excepts to the Trial Examiner's intermediate report, to the proceedings, rulings, findings, conclusions, recommendations, and other matters appearing in the record of this cause in the particulars and for the reasons hereinafter stated:

1. To the bias and prejudice of the Trial Examiner against the respondent and intervener; evidenced by:

(a) His denial of intervener's petitions for an investigation and certification of representatives (Board's Ex. 1-MMM, 1-NNN, 1-OOO and 1-XXX), and motion for continuance praying that an election be held by the Labor Board to determine the desires and choice of intervener's members as to employee representation and union affiliation.

(b) His refusal to receive and consider relevant and competent testimony of numerous witnesses offered by intervener concerning numerous matters important to the case of respondent and intervener and particularly showing such witnesses' freedom in the choice of their bargaining representatives and union affiliation, and freedom from employer domination in making such choice.

(c) His preconceived and unjustified assumption that witnesses offered by respondent and intervener were sub-

ject to domination and in fear of their employers, and that they would give false testimony because of such (assumed) domination and fear.

(d) His complete disregard of the overwhelming testimony offered by respondent and intervener.

(e) His refusal to receive and consider evidence showing a principal cause of the organization of the Donnelly Garment Workers' Union, namely, the fear and dislike of the International Ladies' Garment Workers' Union by respondent's employees, which fear and dislike were engendered by acts and threats of fraud, intimidation and violence done by said International Ladies' Garment Workers Union and operating to terrify and coerce garment workers and their employers in Kansas City.

(f) His numerous findings of facts and drawing of inferences and conclusions unwarranted by and in disregard of the evidence.

(g) His unjustified characterization of witnesses of respondent and intervener as unworthy of belief.

(h) His refusal to consider the testimony received, or to hear or consider the testimony of scores of witnesses offered by respondent and intervener, the effect of which testimony, either that received or that offered and not received, if considered, would have been to compel findings contrary to those of the Examiner, including, among others, the following findings:

(h1) That the petition circulated by three employees on March 2, 1937, was not inspired by or in any way promoted by Respondent nor by the Donnelly Loyalty League.

[fol. 6177] (h2) That the meeting of March 18, 1937, was not a Donnelly Loyalty League meeting nor in any way inspired or promoted by respondent or the Donnelly Loyalty League, but was a voluntary and spontaneous reaction of respondent's employees to the campaign of threats, violence and intimidation then being waged in Kansas City by International Ladies' Garment Workers' Union, such employees meeting to discuss ways and means of protecting themselves from violence and coercion; that said meeting was not dominated by persons representing the re-

spondent; that the appearance of Mrs. Reed at said meeting was not planned but occurred in response to a request from an operator from the floor of the meeting; that Mrs. Reed did not say anything to proscribe or discourage membership of respondent's employees in the International Ladies' Garment Workers' Union but on the contrary Mrs. Reed reminded said employees of their freedom of action in union activities and of the respondent's policy of non-interference.

(h3) That three employees did call upon Frank E. Tyler, an attorney of Kansas City, Missouri, on March 27, 1937, and subsequently, for the purpose of discussing protection of respondent's employees from the activities of the International Ladies' Garment Workers' Union; that their discussion with said attorney concerned the possibility of securing an injunction; that said attorney asked for a retainer of \$500.00; that a meeting of employees was held on or about March 30, 1937, for the purpose of discussing the raising of money to pay the retainer fee; that the organization of the Donnelly Garment Workers' Union was not discussed with said attorney until after the date [fol. 6178] (April 12, 1937) of the decision of the Supreme Court of the United States sustaining the constitutionality of the Wagner Act; that said meeting was not a meeting of the Donnelly Loyalty League; that said employees in consulting said attorney and calling said meeting were not inspired, controlled or directed in any way by respondent but acted upon their own responsibility spontaneously and through a desire solely to secure legal advice and assistance in order to protect themselves and fellow employees from violence then being employed by International Ladies' Garment Workers' Union in Kansas City.

(h4) That the organization of the Donnelly Garment Workers' Union and its subsequent existence was not and has not been coerced, inspired, promoted, induced, financed, aided, abetted, dominated, interfered with or influenced by either the respondent or the Donnelly Loyalty League or anyone acting in their behalf.

2. Intervener objects and excepts to the following rulings, findings, conclusions and recommendations in the intermediate report for the reasons stated:

3. To the ruling of the Trial Examiner contained in the third paragraph on page 3 of said amended overruling the motions of intervenor and respondent to dismiss the amended complaint, and to the denial of respondent in motions to dismiss certain paragraphs of the amended complaint.

4. To the finding in paragraph 4 thereof that the Donnelly Garment Workers' Union admits to membership all the employees of respondent, for the reason that such finding is without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

[fol. 6179] 5. To the finding in paragraph 5 thereof that Rose Todd is a supervisory employee, for the reason that such finding is without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

6. To the finding in paragraph 5 thereof that "other supervisory employees of respondent" (except Mrs. Reeves) attended the meeting referred to, for the reason that such finding is without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

7. To the finding contained in paragraph 8 thereof that the activities of the Donnelly Loyalty League, outside of occasional social affairs, coincided with efforts of the Union to organize respondent's employees, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

8. To the findings contained in paragraph 9 thereof that all executives and supervisory employees were members of the Donnelly Loyalty League and that the League remained in nebulous form to be called into use when the occasion required, for the reason that said findings are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, immaterial, and irrelevant, and are not binding upon either the respondent or intervenor if true.

9. To the findings contained in paragraph 10 thereof that Herbert Mutchler and Rose Todd are supervisory employees of the respondent, such findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, said findings being arbitrary,

unjust, false and unfounded, springing from the bias and prejudice of the Trial Examiner against respondent and intervener, and not binding upon respondent and intervener.

[fol. 6180] 10. To the findings contained in paragraph 11 thereof that the respondent supported the Loyalty League and that a Loyalty petition was prepared by representatives of the League, and as a part of its plan, such findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springing from the bias and prejudice of the Trial Examiner.

11. To all of the findings contained in paragraphs 5, 6, 7, 8, 9, 10 and 11 thereof for the reason that said findings are unjustified, immaterial and irrelevant and have no tendency and are incompetent to prove any charge in the complaint of unfair labor practices by the respondent or illegality affecting the Donnelly Garment Workers' Union, and could, if true, in no respect bind or affect intervener or respondent.

12. To the findings contained in paragraph 12 thereof for the reason that said findings are unjustified, in disregard of the evidence, immaterial, prejudicial, not binding upon either intervener or respondent, and do not tend to prove the issues charged in the complaint.

13. To the findings contained in paragraph 13 thereof that a committee circulated the loyalty petition, said finding and all other findings in said paragraph being unjustified, in disregard of the evidence, prejudicial, not binding upon intervener or respondent, not tending to prove the issues charged in the complaint and concerning matters ruled by the Trial Examiner to be beyond the scope of the evidence.

14. To the finding contained in paragraph 13 thereof that there is a large number of inconsistencies in the testimony of respondent's witnesses, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springing from the [fol. 6181] bias and prejudice of the Trial Examiner.

15. To the finding in paragraph 14 thereof that the meeting of March 18, 1937, was a Loyalty League Meeting, which finding is wholly unjustified, is contrary to the evidence of all witnesses offered by respondent and intervenor and contrary to the proffered evidence (refused or not considered by the Examiner) of scores of witnesses whose names are listed in offers of proof filed by respondent and intervenor.
16. Intervenor further excepts to the findings contained in paragraph 14 thereof that the meeting of March 18th was a Loyalty League meeting, that it was called by officers of the Loyalty League and the respondent's facilities and the instructors were used to give notice thereof, for the further reason that such purported facts are not shown by the testimony or any reasonable inference therefrom to have been with the knowledge and procurement of the respondent or by its authority, or under its influence, and for said reasons none of said purported facts are binding upon the respondent or upon the intervenor and do not tend to prove the charges made in the complaint.
17. To the findings and inferences expressed in paragraph 15 thereof to the effect that the meeting was held on company property, that chairs for the meeting were ordered by the Donnelly Loyalty League, that supervisory employees attended the meeting, that Mrs. Reed had advance notice of the meeting, that Mrs. Reed was prepared for the invitation to speak at the meeting, that the management of respondent called the meeting and used the offices of the Donnelly Loyalty League for such purpose, such findings being unjustified, without foundation in the evidence, contrary to and in disregard of the positive testimony and to the testimony of several hundred witnesses [fol. 6182] proffered by respondent and intervenor and refused by the Trial Examiner, such findings evidencing the Trial Examiner's prejudicial belief that all witnesses produced by respondent and intervenor committed perjury and all that they offered to produce would commit perjury.
18. To the findings in paragraph 16 thereof to the effect that Mrs. Reed indicated to the employees that she was opposed to outside unions or to the International Ladies' Garment Workers' Union, that Mrs. Reed said she would

not permit any union to force her employees to join a labor organization, that the employees should not consider an outside union, that the meeting of March 18th laid the ground-work for the formation of the Donnelly Garment Workers' Union, all of such findings being without foundation in the evidence, unjustified and contrary to the positive and overwhelming testimony offered by respondent and intervener and to the testimony of several hundred employees whom respondent and intervener offered to produce, whose testimony the Trial Examiner refused to hear, such action and findings being necessarily based upon the belief by the Trial Examiner that all of said witnesses testified falsely or would testify falsely if given the opportunity, such findings further evidencing the Trial Examiner's bias and prejudice.

19. To the findings in paragraph 17 thereof that the witness, Mrs. Greenhaw, was a disinterested party and a witness worthy of belief, that her testimony was given in a straightforward and unhesitating manner, and that the testimony of respondent's witnesses with respect to the calling of the meeting and circumstances varied substantially, such findings being unreasonable, unjustified and contrary to the evidence, particularly to the admissions of the witness, Greenhaw, that she held a grudge against respondent and was secretly, as an employee of respondent, [fol. 6183] attempting to aid the International Ladies' Garment Workers' Union while it was engaged in unlawful and fraudulent conduct with the publicly announced purpose of ruining respondent's business.

20. To the findings contained in paragraph 18 thereof that an increase of salaries of Donnelly employees was connected with an activity of the International Ladies' Garment Workers' Union and that meetings of the Donnelly Loyalty League and action of the respondent was always tied with some activity of the International Ladies' Garment Workers' Union, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, and not binding upon the intervener.

21. Intervener further excepts to the findings referred to in paragraphs 17 and 18 hereof for the reason that said findings are not binding upon intervener and do not justify the further inference and finding that intervener was organized as a result thereof or that respondent's employees were, by reason thereof, controlled or influenced and deprived of their freedom of action and choice in organizing intervener union.

22. Intervener further excepts to the findings referred to in paragraphs 17 and 18 thereof for the reason that said findings, considering the overwhelming, substantial evidence, demonstrate the inability or unwillingness of the Trial Examiner to consider the evidence judicially and reach conclusions necessitated by the evidence, and establish that intervener was denied due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

23. To the findings of paragraph 19 thereof that there [fol. 6184] was a substantial amount of conflicting testimony concerning the meeting of March 30, 1937, that Mr. Smith's testimony cannot be accepted, that his recollection of the meeting and the testimony of all of respondent's witnesses was hazy, such findings being unreasonable, unjustified, contrary to and without foundation in the evidence, and to the evidence offered and refused, and arrived at in disregard of the evidence, immaterial and irrelevant, and not binding upon the intervener or respondent, such findings further evidencing the bias and prejudice of the Trial Examiner and his inability or unwillingness to reach conclusions necessitated by the evidence.

24. To the findings contained in paragraph 20 thereof that the meeting of about March 30, 1937, was never held, that the date of the latter part of March or the first part of April for said meeting was used falsely, that the \$500.00 paid to attorneys was paid in behalf of the Donnelly Loyalty League and that the same was paid for the formation of the Donnelly Garment Workers' Union, such findings being unfounded in the evidence, unjustified, contrary to the evidence, in disregard of the evidence, springing from bias and prejudice of the Trial Examiner, immaterial and irrelevant, and not affecting the legality of intervener nor binding upon the respondent.

25. To the finding contained in paragraph 21 thereof that if it had been planned to collect the funds for an attorneys' retainer on March 30th a loan would have been unnecessary, or if so, Todd would have reported the loan, said finding being on its face purely argumentative, based upon assumptions not justified by the evidence, being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, immaterial and irrelevant [fol. 6185] and not binding upon intervenor or respondent.

26. To the findings contained in paragraph 22 thereof that the employment of attorneys and the raising of funds were for the purpose of organizing the Donnelly Garment Workers' Union; that the Donnelly Garment Workers' Union and its formation and organization are inseparably tied up with the Donnelly Loyalty League, such findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, such findings further not binding either intervenor or respondent because of the absence of evidence showing their responsibility therefor.

27. To the findings contained in paragraph 23 thereof that the incident of April 23, 1937, involving Sylvia Hull demonstrates respondent's opposition to the organization of a union in its plant, and demonstrates the activity of the Loyalty League, that respondent erroneously (the Trial Examiner implies) attributes the incident to an article in a Kansas City paper, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, and are irrelevant and immaterial to establish any illegality affecting intervenor.

28. To the finding contained in paragraph 23 thereof to the effect that the employees engaged in the Sylvia Hull incident were never disciplined, said finding erroneously assuming that respondent had any right or duty to discipline employees in the premises.

29. To the findings contained in paragraph 24 thereof and the inferences (implied by the Trial Examiner) therefrom that respondent by the acts found interfered with,

[fol. 6186] coerced, discriminated against or restrained its employees in the exercise of rights guaranteed to them by the Wagner Act, or violated the Wagner Act in any respect, and that respondent by the acts found dominated or interfered with, restrained, coerced, supported or otherwise affected with illegality the organization and existence of intervener union, being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

30. To the findings contained in paragraph 25 thereof that Mrs. Allison, the instructor, and Rose Hendricks, her assistant, and Pearl Collins were supervisory employees and had authority and power and were under a duty to control employees in the premises or to reprimand them, such findings being without foundation or justification in the evidence, contrary thereto and in disregard thereof, and erroneously assuming that said employees had any duty or right to discipline in the premises.

31. To the finding contained in paragraph 26 thereof that the demonstrating employees were not disciplined in any way, such finding assuming a right, power and duty on the part of the employer to discipline in the premises, such assumptions being without foundation in law and without foundation in and contrary to the evidence.

32. To the findings contained in paragraph 27 thereof that the Donnelly Loyalty League received support and encouragement from the respondent and its agents that it was active only on occasions when necessary to call the employees' attention to some activity of the International Ladies' Garment Workers' Union; and that it laid the proper foundation for the formation of the Donnelly Garment Workers' Union, for the reason that said findings are without foundation in the evidence, unwarranted by [fol. 6187] and in contradiction of and in disregard of the evidence, and are not binding upon intervener or respondent.

33. To the finding contained in paragraph 28 thereof that respondent organized and dominated the Donnelly Loyalty League and that such activities had interfered with, coerced and restrained its employees in the exercise of rights granted to them in Section 7 of the Wagner Act,

such findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence, and not binding upon the intervener.

34. To the finding contained in paragraph 29 thereof that witness Cameron Herold was unable to distinguish between an employee meeting on March 18th and the organization meeting on April 27th, the said finding being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

35. To the finding in paragraph 30 thereof that witness Mrs. Lynn Davis and other employees were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, that Mrs. Davis and other employees were of the opinion the employees had consulted attorneys to organize a union and not to secure an injunction, said findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence, and springing from the bias and prejudice of the Trial Examiner.

36. To the finding contained in paragraph 31 thereof that Rose Todd testified that she had an interview with Attorney Tyler on April 13, 1937, about an injunction, and to the finding that Tyler was originally employed for the purpose of organizing an independent union, said findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

[fol. 6188] 37. To the findings in paragraph 32 thereof that the testimony of Rose Todd and Hobart Atherton conflict as to why the meeting of April 27, 1937, was called, and that Rose Todd's testimony indicates that the meeting just happened, said findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

38. To the findings contained in paragraph 33 thereof that Rose Todd is a supervisory employee and as such is the directing influence in the Donnelly Garment Workers' Union, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

39. To the findings and inferences contained in paragraph 34 thereof because the said findings and inferences are unjustified by the evidence and pertain to matters that are irrelevant, immaterial and inconsequential, not shown by the evidence to have been done by authority or with the knowledge of respondent, and do not tend to prove any violation of law by respondent or any illegality affecting intervenor.

40. To the finding contained in paragraph 35 thereof that Rose Todd is a supervisory employee, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

41. To the findings contained in paragraph 36 thereof that Nellie Stites and other employees were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, and that the chairs for the April 27th meeting were ordered by the Donnelly Loyalty League, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

[fol. 6189] 42. To the findings contained in paragraph 37 thereof, for the reason that the same, as stated by the Trial Examiner, do not fairly or with necessary completeness reflect the occurrences at said meeting as disclosed by the evidence, but give an incomplete, biased and prejudicial view thereof.

43. To the findings contained in paragraph 38 thereof that Miss Todd dictated the name of the Donnelly Garment Workers' Union, and to the further fact that the quotations embodied in said findings are selections of portions of the remarks of the persons quoted, other portions being ignored, thus changing the effect of the remarks made by said persons, such findings being, unjustified and in disregard of the evidence.

44. To the findings contained in paragraph 39 thereof, with respect to the appointment of the nominating committee, its representation of the employees of the plant, the preparation and adoption of the requirement that officers

of the union must have been employed for one year, for the reason that said findings do not fairly and completely reflect the evidence with respect to such matters, are unjustified, in disregard of the evidence and prejudicial.

45. To the findings contained in paragraph 40 thereof, that the employees were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, because they were not familiar with the by-laws, of the method of electing officers of the union, and that one employee testified that the officers were elected at the meeting April 27, 1937, said findings being without foundation in the evidence, unjustified, contrary thereto and in disregard of the evidence.

46. To the findings contained in paragraph 42 thereof that there was a great deal of conflicting testimony with [fel. 6190] respect to the meeting of May 25, 1937, that Mrs. Greenhaw prepared minutes of this meeting, that the latter part of the meeting was conducted as a Donnelly Loyalty League meeting, that Mrs. Greenhaw's minutes and testimony as to the meeting were correct, that her testimony is credible, that the testimony of respondent's and intervenor's witnesses with respect to the meeting are not consistent with the minutes of the Donnelly Garment Workers' Union or with the chronology of events which preceded and following the meeting of May 25, 1937, said findings being without foundation in the credible evidence, unjustified, contrary to and in disregard of the overwhelming evidence received and that offered and refused by the Trial Examiner.

47. To the findings contained in paragraph 43 thereof that the minutes of the meeting of May 27th as written by Mrs. Greenhaw are correct, and that Marjorie Green testified she changed the minutes of the meeting of April 27th, said findings being without foundation in the credible evidence, unjustified, contrary to and in disregard of the overwhelming evidence, and springing from the bias and prejudice of the Trial Examiner.

48. To the findings contained in paragraph 44 thereof that the Donnelly Loyalty League was organized by the executives of respondent acting through supervisory employees, that it was organized in an effort to prevent the

unionization of the Donnelly Garment Company by the International Ladies' Garment Workers' Union, that Rose Todd and Hobart Atherton are supervisory employees, that the Donnelly Loyalty League was inseparably tied up in the financing, organization, formation and administration of the Donnelly Garment Workers' Union, that respondent's executives were responsible for the organization of the Donnelly Loyalty League, that respondent's executives were responsible for the organization of the Donnelly [fol. 6191] Garment Workers' Union, that the respondent organized, formed, sponsored, dominated and supports the Donnelly Loyalty League, that the respondent organized, formed, sponsored, dominated and supports the Donnelly Garment Workers' Union, all of said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, and in making said findings the Trial Examiner has deprived intervenor of a fair and impartial trial, deprived intervenor's members of the rights guaranteed to them by Section 7 of the National Labor Relations Act, and of due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

49. To the findings contained in paragraph 45 thereof that a relationship of supporting, sponsoring and dominating has been exercised by the respondent over the Donnelly Loyalty League and the Donnelly Garment Workers' Union, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner, and being insufficient in law and fact to bind intervenor or affect its legality or the legality of its contracts.

50. To the finding contained in paragraph 46 thereof that Martha Gray is a supervisory employee, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in law and fact to bind respondent or intervenor, or to affect intervenor's legality or the legality of its contracts.

51. To the finding contained in paragraph 47 thereof that all the plant employees were familiar with the fact that executives and supervisory officers were members of the Donnelly Loyalty League, said finding being without foundation in the evidence, unjustified, contrary to and in [fol. 6192] disregard of the evidence, and being insufficient in law and fact to bind respondent or intervener, or to affect intervener's legality or the legality of its contracts.

52. To the findings contained in paragraph 48 thereof that an instructor is in charge of forty operators, that a second girl in each section is an assistant instructor, that Rose Todd has not been assigned to any particular department since her re-employment, "being directly responsible to Mr. Batty, the plant superintendent", and to the inference intended to be drawn from the quoted finding that Todd is a special or close assistant to the plant supervisor and therefore in a supervisory position, for the reason that said findings and inference intended to be drawn therefrom as to Todd's work and position are based upon incomplete and distorted statements of the evidence, are without foundation in the evidence, unjustified, contrary thereto and in disregard of the evidence, and are insufficient in law and fact to bind respondent or intervener or to affect intervener's legality as a bona fide union or the legality of its contracts.

53. To the findings contained in paragraph 49 thereof as to Todd's duties and the inference intended to be drawn therefrom that Todd is a supervisory employee, for the reason that said findings are incomplete, insufficient and distorted statements of the evidence, and are unjustified and in disregard of the evidence and said inference is without foundation in the evidence, contrary to and in disregard of the evidence, and is insufficient in law and fact to bind intervener or respondent or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

54. To the findings contained in paragraph 50 thereof and the inference intended to be drawn therefrom that Todd is a supervisory employee for the reason that said [fol. 6193] findings are incomplete, insufficient and distorted statements of the evidence, and are unjustified and

in disregard of the evidence, and said inference is without foundation in the evidence, contrary to and in disregard of the evidence, and is insufficient in law and fact to bind intervenor or respondent or to affect the legality of intervenor's existence as a bona fide union or the legality of its contracts.

55. To the findings contained in paragraph 51 thereof that Rose Todd succeeded to a part of the duties of Mrs. Wherry, an assistant plant superintendent or general instructor, and that Rose Todd is one step above the instructors in their relationship to the plant superintendent, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, the inference therefrom that Rose Todd is a supervisory employee being unjustified, contrary and in disregard of the evidence, and said findings and intended inference being insufficient in law and fact to bind respondent or intervenor, or to affect the legality of intervenor's existence as a bona fide union or the legality of its contracts.

56. To the findings contained in paragraph 52 thereof that Rose Todd is a supervisory employee, that her dual capacity as a supervisory employee and president of intervenor accounts for the fact that she has a desk on the 7th floor, that she transacted union business at her desk during working hours, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in law and fact to bind respondent or intervenor, or to affect the legality of intervenor's existence as a bona fide union or the legality of its contracts.

57. To the findings contained in paragraph 53 thereof for the reason that said findings are without foundation in [fol. 6194] the evidence, unjustified, contrary to and in disregard of the evidence, are irrelevant, immaterial and inconsequential, and are insufficient in law and fact to bind respondent or intervenor, or to affect the legality of intervenor's existence as a bona fide union or the legality of its contracts.

58. To the findings contained in paragraph 54 thereof that Hobart Atherton is a supervisory employee, that he performs the duties of a supervisor, that he

performs the duties of a supervisor in the mechanical department, that he was indefinite about receiving phone calls for repairs, that he transmits instructions to employees of the mechanical department, that his explanation of his work creates an impossible situation, such findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in fact and law to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

59. To the findings contained in paragraph 55 thereof that Mrs. Nichols and Ted Scoles are supervisory employees, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in fact and law to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

60. To the findings contained in paragraph 56 thereof that Pauline Hartman is in a position analagous to that of a supervisory employee, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, being a product of the bias and prejudice of the Trial Examiner, evidencing clearly the apparent desire of the Trial Examiner to strain the evidence for findings adverse to respondent and intervener, [fol. 6195] said findings and the inferences, if any, intended to be drawn therefrom being unjustified and insufficient in fact and law to bind intervener or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

61. To the finding contained in paragraph 57 thereof that Jack McConaughy formerly was in charge of the service or mechanical section, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

62. To the finding contained in paragraph 58 thereof that Marvin Price is a supervisory employee, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and such finding beng insufficient in law and fact to bind intervener

or respondent or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

63. To the findings contained in paragraph 58 thereof that sewing instructors are supervisory employees and that their membership in the Donnelly Garment Workers' Union sufficiently indicates to the machine operators that it is advisable for them also to belong to the Donnelly Garment Workers' Union, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner, and such findings being insufficient in law and fact to bind intervenor or respondent or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

64. To the findings contained in paragraph 60 thereof that Mrs. Reeves testified that "Competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same", that instructors were left off the Loyalty petition until their [fol. 6196] signatures were requested by Mrs. Reed, that the quoted remarks of Hobart Atherton indicated a doubt that the instructors should be admitted to full membership in the union, and to the statement quoted in the testimony of May Fike, for the reason that same are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, are incompetent and insufficient recitals of the evidence, give a warped and biased view of the evidence, do not support or justify the conclusions and inferences drawn and intended to be drawn therefrom, and such findings, conclusions and inferences are insufficient in law and fact to bind intervenor or respondent or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

65. To the findings contained in paragraph 61 thereof that the testimony of respondent's and intervenor's witnesses show the instructors to be supervisors, and that the instructors' supervisory authority is shown by the fact that when work is slack the instructors decide who shall take a day off and in what order the operators will take off their time, for the reason that said findings are without foundation in the evidence, unjustified, contrary to and

in disregard of the evidence and the recitals of the evidence in said paragraph contained, and incomplete and insufficient, give a warped and biased view thereof, do not support or justify the conclusions drawn and intended to be drawn therefrom, and such findings and conclusions are insufficient in fact and law to bind intervenor or respondent or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

66. To the evidence referred to in paragraphs 60, 61 and 62 thereof, and the conclusions and inferences intended [fol. 6197] to be drawn therefrom, for the reason that same is not the whole evidence, that said evidence fairly considered, or considered with all the evidence does not support or justify the conclusion and inference that instructors are supervisory employees, that said evidence is insufficient in law and fact to bind intervenor or respondent, or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

67. To the findings, inferences and conclusions contained in and implied in paragraphs 60, 61, 62 and 63 thereof that instructors are supervisors, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and are insufficient in fact and law to bind intervenor or respondent, or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

68. To the findings, inferences and conclusions contained in paragraph 63 thereof that examiners and inspectors are supervisory employees, said findings, inferences and conclusions being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, being a product of the bias and prejudice of the Trial Examiner, evidencing clearly the apparent desire of the Trial Examiner to strain the evidence for findings adverse to intervenor and respondent, said findings, inferences and conclusions that examiners and inspectors are in a position analogous to supervisory employees being insufficient in fact and law to bind intervenor or respondent, or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

69. To the evidence quoted in paragraphs 64, 65, 66 and 68 of the Trial Examiner's intermediate report, for the reason that same is not the whole evidence, that said evidence [fol. 6198] fairly considered, or considered with all the evidence, does not support or justify the conclusion that instructors have been supervisory employees at any time material to the charges made in the complaint, that said evidence is insufficient in fact and law to bind intervenor or respondent or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

70. To the finding contained in paragraph 68 thereof that the change in June 1935 was not in accordance with Mrs. Reed's testimony, quoted in said paragraph, of May 1935, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

71. To the findings contained in paragraph 69 thereof that the operator knew nothing of the change in authority of sewing instructors effected in June 1935, and that they looked upon the instructors in the same way at the time of the organization of Donnelly Garment Workers' Union as they did prior to June 1935, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and insufficient in law and fact to bind intervenor or respondent, or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

72. To the finding contained in paragraphs 69 and 70 thereof to the effect that the action of sewing instructors in becoming members of the union demonstrates the relationship of the respondent to the Donnelly Garment Workers' Union, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and such finding is insufficient in law and fact to bind intervenor or respondent, or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

[fol. 6199] 73. To the findings contained in paragraphs 71 and 72 thereof to the effect that the matters therein enumerated establish a relationship between the respondent and the Donnelly Garment Workers' Union, such findings

being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and based upon incidents which are trivial, inconsequential and immaterial, not shown to have been done with the knowledge or authority of respondent, and insufficient in law and fact to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

74. To the findings contained in paragraph 72 thereof that the intervener had no office or meeting place except in respondent's plant, and that intervener used respondent's typewriters, desks, ditto machine, safe and bulletin boards, for the reason that said findings are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, the evidence showing that intervener paid rent for the use of the meeting room and for the further reason that the matters referred to are of a trivial, inconsequential and immaterial nature, not shown to have been done without knowledge or authority of respondent, and are insufficient in law and fact to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

75. To the findings contained in paragraph 73 thereof to the effect that an inseparable relationship existed between the respondent and the Donnelly Garment Workers' Union, that it was conclusive to the employees, that such inseparable relationship is evidenced by the actions of supervisory employees, the leadership of supervisory employees in the Donnelly Loyalty League and the Donnelly Garment Workers' Union, and the use of respondent's [fol. 6200] building, equipment and supplies, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

[fol. 6201] 76. Intervener further excepts to the conclusions and inferences drawn and intended to be drawn, if any, by the Trial Examiner from the fact of the membership of Martha Grey, Herbert Mutchler, Rose Todd, Hobart Atherton, Mrs. Nichols, Pauline Hartman, Ted Scoles, Jack McConaughy, Marvin Price and the instructors, inspectors and examiners and other alleged supervisory employees in

the Donnelly Loyalty League or the Donnelly Garment Workers' Union, the said conclusions and inferences being that by such membership and activities, if any, said persons represent the respondent, or are believed by other employees to represent the respondent and are coercive influences upon other employees and rob such employees of their freedom of action and cause them to support and belong to said organizations. Such conclusions and inferences and others of similar import, if intended to be drawn by the Trial Examiner, are not drawn definitely but are merely hinted at and intervenor objects and excepts to the same for the reason that they are wholly without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and are insufficient in law and fact to bind respondent or intervenor, or to affect intervenor's existence as a bona fide and lawful union, or the legality of its contracts.

77. To the finding contained in paragraph 73 thereof that acquiescence of Mrs. Reed and Rose Todd to a closed shop contract constituted a reversal of the positions taken by them at the meeting of March 18, 1937, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springing from the bias and prejudice of the Trial Examiner.

78. To the findings contained in paragraph 74 thereof that Rose Todd's testimony as to a meeting of April 28, [fol. 6202] 1937, with Mrs. Reed is indefinite and contradictory and that no careful check was made of the thirteen hundred signatures and cards, the same being unjustified from the evidence, contrary thereto, irrelevant and immaterial and not tending to prove any issue in the case.

79. To the findings contained in paragraph 75 thereof that on April 23rd Rose Todd stated to Fern Sigler: "We are going to run an open shop as long as the majority feels that way. The majority is going to rule as always.", and that on May 11th she advised a meeting of the Donnelly Garment Workers' Union that "anybody coming to work for us will join the union immediately. If there is any doubt in their minds about whether or not they want to join our union, then there is some doubt in their minds as to whether or not they want to work here.", said findings

being irrelevant and immaterial and not tending to prove any charge in the complaint.

80. To the findings contained in paragraph 76 thereof that the reversal of Mrs. Reed's and Miss Todd's viewpoint on the closed shop "can only be explained by the conclusion that having organized and dominated the Independent the respondent intended to insure its future control of this organization", said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and of the provisions of the National Labor Relations Act, Section 9(a).

81. To the evidence quoted in paragraphs 77 and 78, and the inferences and conclusions, if any, intended to be drawn therefrom, for the reason that same is not the whole evidence, that by the separation of said evidence from other evidence pertaining to said subjects, same is warped, distorted and unfair, and unjustified meaning given thereto, that said evidence fairly considered, or considered with all the evidence does not support or justify any inference [fol. 6203] that intervener's contracts are illegal, or other inferences intended by the Trial Examiner, and are insufficient in law and fact to affect intervener's existence as a lawful and bona fide labor union, or the legality of its contracts.

82. To the findings contained in paragraph 79 thereof that Mr. Baty's testimony as to the discussion at the meeting of May 27, 1937, is in conflict with the weight of the testimony and should be given no weight, and that his entire testimony is at variance with the facts established by the record, are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and spring from the bias and prejudice of the Trial Examiner.

83. To the refusal, as stated in paragraph 80 thereof, of the Trial Examiner to consider the testimony with respect to the provisions of the supplemental agreement, said testimony being competent, relevant and material to establish the genuineness and legality of intervener union as an independent bargaining agency free from coercion, domination or sponsorship by the respondent.

84. To the finding contained in paragraph 80 thereof that the Donnelly Garment Workers' Union was and is sponsored, dominated and supported by respondent, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner.

85. To the finding contained in paragraph 81 thereof to the effect that the contract entered into between intervenor and respondent is void and of no force and effect, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springs from the bias and prejudice of the Trial Examiner.

[fol. 6204] 86. To the findings contained in paragraph 82 thereof to the effect that a check-off system was instituted without authority from the membership or group chairman, that Rose Todd and Jack McConaughy were unable to satisfactorily explain any plan to check the amount received, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner.

87. Intervenor excepts to the finding in paragraph 84 thereof to the effect that an instructor and assistant instructor were present during the time of the demonstration against Sylvia Hull and to the inference and conclusion intended to be drawn therefrom for the reason that the evidence does not show that said persons or the respondent had any ability, right, duty or authority to prevent said incident, or to reprimand or discipline those responsible therefore, or if such power, duty and authority existed in such instructor and assistant, that their failure to exercise same is insufficient in law and fact to bind respondent or intervenor or to prove any charge in the complaint or to affect intervenor's existence as a bona fide and lawful labor union, and the legality of its contracts.

88. To the finding contained in paragraph 87 thereof that Sylvia Hull was excluded from the plant by respondent because of her membership or activities in behalf of the International Ladies' Garment Workers' Union, said

finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

89. To the finding and conclusion contained in paragraph 88 thereof that the alleged exclusion of Hull from [fol. 6205] respondent's plant was an unfair labor practice, for the reason that said finding is without support in the law and the evidence, contrary to the law and the evidence, unjustified under the law and the evidence, and in disregard of the evidence, and for the reason that said finding and conclusion are insufficient in fact and law to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful labor union, and the legality of its contracts.

90. To the finding contained in paragraph 89 thereof that Fern Sigler was excluded from the plant of the respondent for the reason that said finding is without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

[fol. 6206] Exceptions to "Conclusions and Recommendations"

91. Intervener further objects and excepts to the following conclusions and recommendations appearing under the subject, "Conclusions and Recommendations", in the Trial Examiner's intermediate report.

92. To the finding and conclusion that respondent has dominated and interfered with the formation and administration of the Donnelly Garment Workers' Union, has contributed support to it and that respondent has engaged in unfair labor practices within the meaning of Section 8 (2) of the National Labor Relations Act, said finding and conclusion being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

93. To the finding and conclusion contained in paragraph 2 thereof that respondent discriminated in regard to the tenure of employment of Sylvia Hull, that thereby respondent discouraged membership in the International Ladies' Garment Workers' Union and that thereby respondent has engaged and is engaged in unfair labor practices within the meaning of Section 8 (3) of said act, said finding and conclusion being without foundation in the

evidence, unjustified, contrary to and in disregard of the law and the evidence.

94. To the findings and conclusions contained in paragraph 3 thereof that respondent has and now is interfering with, restraining and coercing its employees in their exercise of the rights guaranteed by Section 7 of the act, and that respondent has and is engaged in unfair labor practices within the meaning of Section 8 (1) of the act, said findings and conclusions being without foundation in the evidence, unjustified, contrary to and in disregard of the law and the evidence.

95. Intervener further objects and excepts to the following [fol. 6207] recommendations contained in the Trial Examiner's intermediate report appearing therein under the subject entitled, "Conclusions and Recommendations".

96. To the recommendation contained in paragraph 1 (a) for the reason that said recommendation assumes that respondent is dominating or interfering with the formation or administration of the Donnelly Garment Workers' Union or any other labor organization of its employees, and contributing support thereto or to any other labor organization, such assumptions being without foundation in the evidence, unjustified, contrary to and in disregard of the law and the evidence.

97. To the recommendation contained in paragraph 1 (b) for the reason that same assumes that respondent is discouraging membership in the International Ladies' Garment Workers' Union or any other labor organization of its employees by discriminating in regard to their hire or tenure of employment or any term or condition of their employment, such assumptions being without foundation in the evidence, unjustified, contrary thereto and in disregard of the law and the evidence.

98. To the recommendations contained in paragraph 1 (c):

That respondent cease and desist from recognizing the Donnelly Garment Workers' Union as the representative of its employees for the purpose of dealing with respondent with respect to grievances, labor disputes, wages, rates

of pay, hours of employment and conditions of employment,

and in paragraph 1 (e);

That respondent cease and desist from giving effect to its contract with the Donnelly Garment Workers' Union and to any modification, continuation, supplement, extension, or renewal thereof,

and in paragraph 1 (f);

That respondent cease and desist from giving effect to any agreement for the deduction or collection of dues from the wages of its employees in behalf of the Donnelly Garment Workers' Union.

[fol. 6208] for the reason that all of such recommendations are predicated upon findings of fact and law which are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and said recommendations deprive intervenor of rights guaranteed to it and its members under Section 7 of the National Labor Relations Act. Said recommendations further deprive and threaten to deprive intervenor's members of their liberty, freedom of association and their property right in their contracts with respondent, all of same being predicated upon a trial in which intervenor was denied due process of law within the meaning of the Fifth Amendment to the Constitution of the United States, by reason of the bias and prejudice of the Trial Examiner and many errors unfair and prejudicial to the intervenor, to which exception is elsewhere taken.

99. To the recommendation contained in paragraph 1 (g) for the reason that same assumes that respondent is engaged in interfering with, restraining or coercing its employees in the particulars and respects and in the matters set forth in said paragraph, said assumption being without foundation in the evidence, unjustified, contrary thereto and in disregard of the law and the evidence.

100. To the recommendation contained in paragraph 2 (a) thereof that respondent withdraw all recognition from the Donnelly Garment Workers' Union as representative of its employees for the purpose of dealing with respo t.

ent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and completely disestablish all relations with the Donnelly Garment Workers' Union as such representative, such recommendation being erroneous and prejudicial to intervenor for all of the reasons stated in paragraph 98 hereof.

[fol. 6209] 101. To the recommendation contained in paragraph 2 (b) that respondent notify all its employees that they are free to join or assist any labor organization (meaning thereby any organization other than intervenor) for the purpose of collective bargaining with the respondent, such recommendation being erroneous and prejudicial as to intervenor for all of the reasons stated in paragraph 98 hereof.

102. To the recommendation contained in paragraphs 2 (c) and (d) thereof that respondent post notices to the effect set forth in said paragraph 2 (c), and report as directed in paragraph 2 (d), the said recommendations and requirements in all particulars in said paragraphs 2 (c) and 2 (d) being erroneous and prejudicial to intervenor for all of the reasons set forth in paragraph 98 hereof.

103. To the recommendation contained in the next to the last paragraph of said intermediate report on page 41 thereof that the respondent communicate with the National Labor Relations Board its willingness to comply with the recommendations of the Trial Examiner and that the matter be referred to the National Labor Relations Board in the absence of such communication, such recommendation being erroneous and prejudicial to the intervenor for all of the reasons set forth in paragraph 98 hereof.

104. Intervenor excepts to the intermediate report, the findings, conclusions and recommendations therein contained, for the failure or inability of the Trial Examiner to judicially consider, follow and abide by the plain and overwhelming import of the evidence in all essential matters.

105. To failure of the Board and of the Trial Examiner to investigate, by holding a secret election or otherwise, and the refusal of the Trial Examiner to hear the evidence

[fol. 6219] of intervener's members, to determine the true desires of intervener's members as to their choice of representation for collective bargaining and union affiliation and their freedom from employer interference, restraint, coercion and domination in making such choice.

Exceptions to Rulings and Errors Appearing in Transcript of Record

Intervener further objects and excepts to the following rulings and errors of the Trial Examiner:

106. To the ruling (Tr. p. 130) denying intervener's motion (Board's Ex. 1-LLL) to dismiss the complaint, for the reasons in said motion stated, said ruling operating to deprive intervener's members of rights guaranteed to them by the National Labor Relations Act and of due process of law as guaranteed to them by the Fifth Amendment to the Constitution of the United States.

107. To the ruling (Tr. p. 130, 194) denying intervener's application for an election and for a continuance (Board's Ex. 1-MMM); to the ruling (Tr. p. 130, 194) denying intervener's petitions for investigation and certification of representatives (Board's Ex. 1-NNN and 1-OOO;) and to the ruling (Tr. P. 130, 194) denying intervener's motion for a continuance (Board's Ex. 1-XXX) to permit an election to be held to determine the free will choice of intervener's members as to their bargaining representatives and union affiliation, said rulings being erroneous for the reasons set forth in said application, petitions and motion for continuance, and for the reasons set forth in the argument of intervener's counsel appearing in the transcript of the record at pages 185 to 194, inclusive, said rulings operating to deprive intervener's members of rights guaranteed to them by Section 7 of the National Labor Relations Act and of due process of law as guaranteed to them [fol. 6211] by the Fifth Amendment to the Constitution of the United States.

108. To the ruling contained in Board's Ex. 1-YYY denying intervener's motion (Board's Ex. 1-WWW) to make the amended complaint (Board's Ex. 1-RRR) more definite and certain in the particulars set forth in paragraphs (1), (2) and (3) of said motion, by reason of which inter-

vener was deprived of due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

109. To the ruling contained in Board's Ex. 1-YYY, paragraph 7, denying the petition contained in part C. of respondent's answer (Board's Ex. 1-JJJ), for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, said ruling operating to deprive intervenor's members of rights guaranteed to them by Section 7 of the National Labor Relations Act and to deprive them of due process of law guaranteed to them by the Fifth Amendment to the Constitution of the United States.

110. Intervener excepts to the ruling of the Trial Examiner (Tr. p. 273 overruling intervenor's objection to the receipt of evidence concerning the Donnelly Loyalty League, said objection and overruling order reading as follows:

-"Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers' Union.

"Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection."

[fol. 6212] 111. To the ruling of the Trial Examiner (Tr. p. 306) receiving Board's Exhibit 2 in evidence over intervenor's objection, said objection and ruling reading:

"Mr. Tyler: The intervenor desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

"Trial Examiner Batten: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it

subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as 'Board's Exhibit No. 2' was received in evidence.)

"Mr. Leary: I suggest, Mr. Examiner, it will all be connected up."

112. To the ruling of the Trial Examiner (Tr. p. 321) overruling intervenor's objection to questions as to Loyalty League, said objection and ruling reading as follows:

"Q. (By Mr. Leary) What were the matters that were discussed at these Loyalty League meetings?

"Mr. Tyler. Just a minute. Mr. Examiner, I wish to renew my objection to questions as to the Loyalty League, the method by which it did business, where it held meetings, and the way it carried on its affairs, because it has no connection with the Donnelly Garment Workers' Union and because it has no bearing on the issues tried in this case.

"Trial Examiner Batten: He may testify as to what was discussed at any meeting he attended. To that extent I will overrule the objection. As I said this morning, there is an allegation here that it is a labor organization, and I presume the only way we can determine that is to get the evidence."

113. To the bias and prejudice of the Trial Examiner toward intervenor by his remarks and his refusal to consider the evidence of Rose Todd in regard to what occurred at a meeting between the executive committee of intervenor and its attorney and Mrs. Reed and the executives of respondent (Tr. pp. 554-559), the record with respect thereto reading:

"Q. You remember there was a great deal of discussion, do you?

A. I certainly do.

Q. Do you remember any matters that you discussed?

A. Yes, each step of that thing was discussed, Mr. Leary, in detail.

Q. Now will you explain any bargaining that went on between yourself and the company?

Mr. Lane: Now, if the Examiner please, I submit that calls for a conclusion and I think the witness said there was a great deal of discussion pro and con, back and forth, about the terms, and that constitutes a part of it.

Trial Examiner Batten: Well, of course, I will agree with you this far: that there is some difference of opinion as to what bargaining is. I think if the witness will tell, the unfortunate part about it, Mr. Lane, is that the witness just can't tell us what the discussion was.

Now, she said there was a lot of discussion. That doesn't mean anything. Now, if she could remember what, as usually is done in these matters, she could tell what she said, what Mrs. Reed said, what the other members said, but she can't remember what anybody said. So I can't accept her statement that there was any discussion, when she can't remember anything, even if it was 2 years ago.

The Witness: Mr. Batten—

Q. (By Mr. Leary) You may state, Miss Witness, any discussion that took place.

A. I did say, or try to say, that each step of this agreement was discussed.

Trial Examiner Batten: But, Miss Todd, there is the point where I would like to ask you a question. Now, that doesn't mean anything unless you can tell in substance, at least, what you said and what Mrs. Reed said, who was another very important party to this transaction, or what the attorneys said. You can't tell us anything about it.

A. Well, I don't know, Mr. Batten. This agreement was primarily drawn up by the Donnelly Garment Workers' Union with the assistance of our attorneys, and we would naturally have been presenting this to her as it was written.

Q. (By Trial Examiner Batten) I know all that, but, Miss Todd, my point is this: that if I attended the meeting, at which I entered into a contract, and I were to enter the [fol. 6214] organization, even if it were two years ago, a matter of wages and working conditions, I would have some idea about what took place at the meeting. At least, I

would remember what I did and what I said. Now, you don't seem to have any recollection of it.

A. Well, I certainly will never forget that meeting. Now, as to going in and telling—I seem to be in this position: that if I say I said such-and-such a thing on that day, then I am to be asked something about this, and if—I couldn't word a thing that I said on that day like that now.

Q. Miss Todd, I am asking you, in substance, what did you say, if anything?

A. That this was what we had prepared, not this particular paper, but a similar paper, and we would want to offer it to her for her consideration.

Q. Well, now, just—

A. (Interrupting) And these are the things that were demanded—

Q. (Interrupting) Just a moment. Are you the one that offered her the paper?

A. I don't think that I did. I think—

Q. (Interrupting) Who did?

A. I think Mr. Tyler did.

Q. Well, are you sure that you didn't?

A. Yes, I am quite certain that Mr. Tyler read this to Mrs. Reed. I know I am right about that.

Q. Now, at any point in this conference, did you say anything at any time?

A. Yes, Mr. Batten. I had a great deal to do with the conversation. It was a general discussion of the people that were there.

Q. Well, now, tell me now some of the things that you said.

A. Well, I just don't know how to tell you any further than that; discussing each point of this contract is what went on, at that meeting. I don't know how to tell you any different.

Q. Did you discuss each point?

A. I don't know that I discussed each one, but I took an active part.

Q. Did you discuss any one of the points that you recall? [fol. 6215] A. I surely did. I think I probably discussed,—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something too. No doubt they did.

Q. Now, Miss Todd, "may"—of course, "may" anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

Mr. Ingraham: Just a moment—

Q. (By Trial Examiner Batten, interrupting) Tell me what you remember about it.

A. I don't seem to know how to tell it.

Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?

Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

Mr. Ingraham: I except to your Honor's remarks.

Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

Mr. Tyler: The intervener wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were principalized in written form, which is the summary of the witness' memory of what was done; that there is no provision or

presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

If the court will recall, she has testified that these demands were submitted as demands of the union.

[fol. 6216] Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

Mr. Ingraham: Respondent excepts to the remark.

Mr. Tyler: The intervenor excepts.

Mr. Ingraham: As highly prejudicial.

Trial Examiner Batten: Well, if it is incorrect I think it is, Mr. Ingraham.

Mr. Ingraham: I think it is incorrect.

Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago.

Trial Examiner Batten: Mr. Stottle, I think the record will clearly indicate what everybody's position is, what questions were asked and what the answers are. Of course if it is prejudicial, the record will bear it out."

114. To the error of the Trial Examiner toward intervenor and respondent evidenced by his remarks and his refusal to receive testimony concerning rumors and threats of violence toward employees of the Donnelly Garment Company, said evidence being offered to show the effect thereon upon said employees and being competent, relevant and material for that purpose, the evidence and error complained of reading (Tr. pg. 838-839):

Q. What was the purpose of chartering buses?

A. The purpose was to give the employees protection in coming to and from work that apparently was needed.

Q. (By Trial Examiner Batten) You say "apparently". What do you mean by "apparently"?

A. Because of all of these threats and rumors.

Q. Were you ever threatened individually by anybody?

A. Not any one person, Mr. Batten.

Q. Did anybody ever threaten you personally?

A. Not personally, no sir.

[fol. 621Z] Q. Then, all you know about it is what you heard, is that right?

A. That is right.

Q. (By Mr. Stottle) Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?

A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work.

Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

Trial Examiner Batten: [Ware] not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify.

I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters."

115. To the refusal of the Trial Examiner (Tr. pp. 865-867) to receive and consider evidence of Wage scales provided in contracts of the International Ladies' Garment Workers' Union in similar industries in the Kansas City territory for the purpose of comparison with higher wage scales obtained by intervener in its contract with respondent, the said evidence being material and competent to show that intervener is a bona fide union and its contracts are the result of genuine bargaining, the record with respect thereto reading in part as follows:

Mr. Lane: Mr. Examiner, may I state the intervener's position in connection with this matter?

Trial Examiner Batten: Yes.

Mr. Lane: It has been asserted here, by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that [fol. 6218] were obtained in the contract which was entered into ~~as~~ an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

Whether that result was obtained by collective bargaining or not would have to be determined from some other means. But the comparison of the prices is an important factor to determine the result obtained by this union in the contract, and I submit it is therefore proper, and we will expect to offer evidence to show that the minimum wage guarantee obtained in our contract was substantially in excess of that obtained in other garment industries.

Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case.

I think the material thing is, as I told Mr. Ingraham, whether there were negotiations, whether there was collective bargaining, and whether it was arrived at freely by

a representative of the employees and the management. If so, it wouldn't make any difference what the employees of the Donnelly Company were getting, whether \$5 minimum or half as much as any other plant in town. The employees, if they are free to bargain and contract, can contract and bargain for anything they want, so you do not have to compare it, Mr. Lane, with somebody else's plant."

116. To the ruling of the Trial Examiner (Tr. pp. 907-916) refusing to receive and consider evidence of violence, newspaper reports and other reports and rumors of violence at other plants perpetrated by International Ladies' Garment Workers' Union and reports of threats of impending violence by International Ladies' Garment Workers' Union toward interveners' members, and evidence of fraudulent conduct with respect to intervener's members, said evidence being competent and material evidence showing [fol. 6219] ing a principal motive and producing cause for the organization of intervener union, the record with respect thereto reading in part as follows:

"Q. Had the employees before that time manifested resentment against the action of the International Ladies' Garment Workers' Union? A. Very definitely.

Q. In what ways?

A. One way was, we had been to talk to Mr. Gossett and Mr. Tyler previous to that time.

Q. And had been to the police prior to that time?

A. And had been to the police. There had been a meeting of the employees, discussing what they could do in the way of protecting themselves against the actual physical attacks that were being threatened.

Trial Examiner Batten: Just a minute, Miss Todd.

Q. (By Trial Examiner Batten) Did anybody physically attack you? A. Not personally.

Q. (By Mr. Tyler) Had you or had you not seen notices in the papers of physical violence at the Gerney plant?

Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gerney plant.

Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired

to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason—whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that [fol. 6220] testimony, but I am not in this hearing going into all of the rumors that fly around during an organization campaign of unions.

Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it.

Mr. Tyler: All right.

Q. (By Mr. Tyler) Had there been picketing of the Donnelly plant by the International before the incident to which you referred? A. There had been.

Q. On about what date did the International picket the Donnelly Garment plant?

A. That has been done a good many times, as far back as December, 1934, and I think again in the early part—January or February of 1935. And there has been some other picketing since that time with—they had thrown pamphlets and circulars.

Q. Did you see this picketing you speak of yourself?

A. Yes, sir.

Q. Did you see any of the banners or signs the pickets carried? A. Yes, sir.

Q. Do you remember what they said on them?

Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made."

At page 911:

"Mr. Tyler: I wish to say, we will show at a later period the acts of violence by the complainant in this case, and the threats that had been applied to these interveners, but I don't make my offer of evidence on that ground.

I submit to Your Honor that in showing what their real choice of labor unions was they have a right to refer [fol. 6221] to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit they have a right to give their reasons for preferring their own union.

Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof.

At page 913:

"Mr. Tyler: I wish to make an offer of proof.

Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment

Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

Mr. Langsdale: May I ask Mr. Tyler a question about that offer?

Trial Examiner Batten: If an attorney makes an offer of proof—

Mr. Langsdale: (Interrupting) I want to know how to make my objection to it.

Mr. Tyler, is this offer of proof in connection with your effort to have this witness explain what she said as to the Fern Sigler incident?

Mr. Tyler: Partially.

Mr. Langsdale: Then, I object to it on the ground that it has no bearing whatever on the meaning of this witness' statement at the Sigler hearing.

Trial Examiner Batten: What is the balance of your reason?

Mr. Tyler: I submit it does, because she is saying of what she was apprehensive. She is entitled to say the feeling of these employees was such that it would be very uncomfortable for her to join the union, and to say why the feeling of the employees was that way.

She is also entitled to testify along that line for the purpose of showing reasons for the forming of the Donnelly Garment Workers' Union.

[fol. 6222] Mr. Leary: I object to the offer of proof, Mr. Examiner.

Trial Examiner Batten: The offer is denied.

117. To the bias and prejudice of the Trial Examiner against intervener manifested by his unreasonable argument with witness Rose Todd, appearing at pages 947-949 of the Transcript of Record with respect thereto, reading:

"A. Well, there were more complaints, I didn't say there were not. There might be more.

I think we have a pretty good contract, and I don't think to just ask for something unreasonable—We do try to ask for the thing that is right and the thing we think we are entitled to, and try to get it.

Q. (By Trial Examiner Batten) But what has that to do with why you didn't get more complaints?

A. I think if we have already established a good setup in our salaries and piecework prices we are not apt to have as many as if we just had a very small guarantee.

Q. In other words, you think that would indicate the majority of the employees are very well satisfied?

A. In most instances—in a great many instances. I don't know whether that is just the word I should use. But, on the whole, we have a good contract. We have higher guarantees than they have around town.

Q. Does that stop anybody from wanting more?

A. It doesn't but it does make us not want to be unreasonable and ask for something we couldn't possibly get. We have already created a condition by our contract whereby we have more than similar industries in Kansas City.

Q. Do you think, on that basis you should forever be satisfied, then, as long as you are one jump ahead of somebody else?

A. I don't think we would forever be satisfied, no, sir.

Q. Then, how much has that to do with it?

A. We have worked out an agreement there that is above the average in Kansas City, and in doing that we are not possibly creating a thing that makes somebody want something more, more, more, that is unreasonable.

Q. Suppose all of the other shops in Kansas City beginning the first of next month reduced their wages 50 per cent, do you think you should agree to reduce yours 25 percent so you do not get too far away from them?

[fol. 6223] A. I don't think we would.

Q. Then, what relationship is there between them? Isn't it a question of what you produce and how your plant operates, and so forth, that should govern what you get?

A. It does. We have always, Mr. Batten, had good wages at the Donnelly Garment Company. We did get some decided increases in our contract—

Q. (Interrupting) Just a moment. I want you to tell me what you mean by "good." How do you determine what is good?

◆ I think in a community where—

Q. (Interrupting) Let's forget all about the community. You are putting this entirely on a basis of comparison. Outside of that point, what point do you mean by "good?"

A. They are away above the average—

Q. (Interrupting) I say, let's forget all about comparisons. On any other basis are they good?

Mr. Tyler: If the Examiner please, I submit she cannot give an opinion as to whether the wages are good without in some way comparing them with others.

Trial Examiner Batten: Then, she should say so. I am asking her if on any other basis outside of comparison they are good. I am trying to find out if that is the only basis for determining if they are good.

A. No. I think the contract and the salaries the employees receive will speak for themselves, aside from anything else. We know that they are good.

118. The refusal of the Trial Examiner (Tr. p. 981) to receive and consider evidence as to comparative cost of membership in the International Ladies' Garment Workers' Union based on the testimony of Velma Dowdy (Respondent's N.R.A. J.M.C. Exhibit 3, at page 566) and the cost of membership in the Donnelly Garment Workers' Union, said evidence being competent, relevant and material to show a reason for the preference of intervenor's members for the intervening union rather than the International Ladies' Garment Workers' Union, the record showing such refusal at pages 981 to 983:

Q. Miss Todd, did you hear the testimony of Velma [fol. 6224] Dowdy in the injunction suit tried before Judge Miller?

A. Yes, sir.

Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year—

Mr. Langsdale (Interrupting) Just a minute. I object to that as immaterial.

Mr. Tyler: Let me finish my question.

Mr. Langsdale: Then, you have the witness wait until I make my objection.

Mr. Tyler: I will. Please don't answer until Mr. Langsdale makes his objection.

Q. (By Mr. Tyler)—the figures (she testified she paid to the International Ladies' Garment Workers' Union as a member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

Now, don't answer yet.

Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

Trial Examiner Batten: I am not concerned with what you should be entitled to show. What is your objection to this question? That is the thing I am concerned with.

Mr. Langsdale: I object for the further reason it is incompetent and irrelevant what she heard someone testify to in some other court. We are about to enter into a stipulation, I hope, and then if they want to produce that testimony the Examiner will have an opportunity to rule on it.

Trial Examiner Batten: I now rule it absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' and the Donnelly Garment Workers' Unions. The International Ladies' Garment Workers'

Union is not on trial here, neither is the Donnelly Garment Workers Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it."

[fol. 6225] 119. To the refusal of the Trial Examiner to receive and consider the evidence referred to in the offers of proof set forth in that portion of the record quoted below, being quoted from pages 1000 to 1004 inclusive of the Transcript, said evidence so offered having to do with the desire and repeated efforts of intervenor's members, and intervenor to obtain and submit to and abide by an election conducted by the Labor Board and by the Trial Examiner and in Federal Court litigation with the International Ladies' Garment Workers' Union, to determine the free will desire and choice of intervenor's members as to bargaining representatives and labor union affiliation, which said evidence is relevant, material and competent for the purpose offered, and the failure of the Trial Examiner to receive and consider such evidence operated to deprive intervenor and its members of rights guaranteed to them by Section 7 of the National Labor Relations Act and of their liberty, freedom of association and property rights within the meaning of the due process clause of the Fifth Amendment to the Constitution of the United States:

Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees?

A. Yes, Sir.

Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned. What is the—how is it material to these issues, Mr. Tyler?

Mr. Tyler: I wish to show that they have at all times been willing to have such an election and have so expressed

themselves, and have been confident of their ability to win such an election; that they have petitioned the Board for it, and that the suggestion which has appeared somewhere, I believe—I may be wrong about that—that they didn't petition until very late, has a very sound reason, that [fol. 6226] it doesn't in any way discredit their statement that they can prove their choice by an election.

Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

Mr. Tyler: Then, I wish to make an offer of proof.

Trial Examiner Batten: You may make an offer of proof.

Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was, devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attorney to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller.

Mr. Langsdale: The International Ladies' Garment Workers' Union object to the offer for the reason that the matters related in the offer have no bearing whatever upon any of the issues in this proceeding, and for the further reason that if they should have, that this isn't the proper way to make the offer, because the petitions themselves are the best evidence of the contents, and his statement that they have petitioned the Board is a mere legal conclusion.

Trial Examiner Batten: Mr. Tyler,—well, no, I don't know as—I thought I wanted to ask you a question, there. Of course,—I think that I will. Of course, you know that any request to the three-judge court or Judge Miller is of no force and effect, don't you?

Mr. Tyler: I don't concede that, your Honor.

Trial Examiner Batten: I mean, as far as the Wagner Act is concerned, you concede that it is not?

Mr. Tyler: I concede that the Wagner Act does not authorize Judge Miller to hold an election. I concede that.

Trial Examiner Batten: That is what I meant.

[fol. 6227] Mr. Tyler: But I would insist very respectfully, but very earnestly, that what we are trying to find out here is what these employees really want of their own free will and this is some evidence of it. Now, it may be they are dominated in that, or somebody ordered them to do that, but I submit that I have a right to show that they are eager to have an election and they are willing to have it, whether it is under the Wagner Act or otherwise, and agree to abide by the results.

Mr. Foster: Mr. Examiner, I might point out that in counsel's offer of proof, he purely demonstrated it would be impossible to have an election or any certification, due to the fact that by his own statement, he shows clearly that there is no question concerning representation which is a prerequisite for any hearing in a representation case. By his own statement, he indicated clearly that there was no question of representation among the employees at the Donnelly Garment Company. There is no contention on the part of any other organization that they represent a majority. The contract exists now, so, independent of this case, his filing the petition would have no standing before the National Labor Relations Board, in my opinion.

Mr. Tyler: Well, does Mr. Foster agree there is no contention by the International Ladies' Garment Workers' Union that they have a right to represent the employees?

Mr. Foster: I didn't state that. I stated there was no contention on the part of any other organization that they represented a majority.

Trial Examiner Batten: I think Mr. Foster's position is, Mr. Tyler, that as far as this hearing is concerned, or I presume, you are also taking in as far as any petition is, filed?

Mr. Foster: That is right.

Trial Examiner Batten: That there is no question of representation, that is, nobody is disputing—

Mr. Tyler (Interrupting): That the Donnelly Garment Workers' Union is a proper representative of these employees?

Trial Examiner Batten: (Continuing)—is disputing the matter, so there is no question of representation at the present time; at least, there certainly isn't any such question in this hearing.

Mr. Tyler: Well, do I understand that it is conceded that the Donnelly Garment Workers' Union and their committee is a proper representative of the employees for bargaining purposes?

Trial Examiner Batten: Mr. Tyler, nothing is conceded except there is no question of representation. To have a question of representation, there must be somebody who is disputing a fact, and nobody, as far as I can see, [fol. 6228] is disputing any fact.

Mr. Tyler: Very well; your Honor understands my position."

120. To the ruling of the Trial Examiner (Tr. pp. 1267-1268) receiving in evidence and considering Board's Exhibit 14, being the Loyalty League pledge, and overruling intervenor's and respondent's objections thereto, the same being incompetent, irrelevant and immaterial and not binding upon respondent and intervenor, the objections and ruling reading as follows:

"Mr. Lane: I object to Exhibit No. 14 for the reason that it has not been properly identified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

Trial Examiner Batten: It will be received.

Mr. Ingraham: Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case.

Trial Examiner Batten: It is received."

121. To the ruling of the Trial Examiner (Tr. p. 1268 and subsequent) receiving in evidence and considering testimony with reference to the Donnelly Loyalty League and overruling intervenor's and respondent's continuing objections thereto, said testimony being immaterial, irrelevant, incompetent and not binding upon intervenor and respondent, the evidence received, objections and rulings appearing in the following portions of the transcript:

At page 1268:

Q. Do you know whether or not your instructor was present when those documents came through your section?

A. She was in the section, yes, sir.

Q. Do you know whether or not she said anything at the time?

A. She said we should sign and pass that to the next girl, if I remember right.

[fol. 6229] Mr. Ingraham: Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

Trial Examiner Batten: Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.

Mr. Stottle: We further object because it is not identified as to what instructor said that.

Trial Examiner Batten: She may proceed."

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At page 1269:

"Q. About this time, in February, 1935, or thereabouts, did you have occasion to go to Mrs. Reeves' office with any other girls?

Mr. Lane: Mr. Examiner, intervenor objects to this and all similar questions with respect to the formation of the Nelly Don Loyalty League for the reason that it was long

prior to the formation of the Donnelly Garment Workers' Union. There is no connection between the two organizations, and this testimony could in no way be binding on the intervener here; and for the further reason it is anterior to the matters inquired about under the complaint here, and for that reason it is immaterial.

Trial Examiner Batten: You are not representing the Loyalty League, are you, Mr. Lane?

Mr. Lane: I am representing the intervener, and I make the objection on behalf of the intervener for the reason that what happened then does not in any way bind the intervener and does not prove any of the issues brought by this complaint.

Trial Examiner Batten: Of course, it is hard for me to tell now whether it does or doesn't. Objection overruled.

Mr. Ingraham: Respondent objects to the question for the reason that it relates to matters prior to the passage of the National Labor Relations Act.

Trial Examiner Batten: Objection overruled.

Mr. Leary: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. If I remember right, we were called up there to Mrs. Reeves' office, ten at a time.

Q. Who sent you to Mrs. Reeves' office?

A. The instructor.

[fol. 6236]. Mr. Ingraham: Your Honor, may my objection go to all of these matters?

Trial Examiner Batten: Yes, you may have a continuing objection. Mr. Lane, do you wish to have the same?

Mr. Lane: I ask that I have an objection to all of these things.

Trial Examiner Batten: That is, prior to the time you stated in your objection, is that it?

Mr. Lane: Yes."

And continuing thereafter through pages 1271, 1272, 1273, 1274 and ending with the following answer on page 1275:

"Oh, when—during '34 and '35, up until this other organization was formed, they had meetings."

[fol. 6231] 122. To the action and ruling of the Trial Examiner in admitting and considering the testimony of May Fike as to what papers the instructor in her section saw passed around, and overruling the objections of intervenor and respondent thereto, said testimony being incompetent, irrelevant and immaterial and not binding on intervenor or respondent, said testimony, objections and rulings complained of reading (Tr. pp. 1288-1289):

"Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

A. There is never no papers come into that section that she don't know about it before the girls get them, and—

Mr. Lane: I move to strike the answer as not responsive.

Trial Examiner Batten: Let her finish.

Mr. Lane: I thought she had finished.

Trial Examiner Batten: She was saying something else there.

Q. (By Trial Examiner Batten) What were you saying?

A. She is notified of what comes into that section before the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

Q. (By Mr. Leary) Can she see—

Mr. Lane: (Interrupting). Just a moment. If the witness has now finished her answer, I move that it be stricken for the reason that it is not responsive.

Trial Examiner Batten: It may stand.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Objection overruled.

Mr. Lane; I object to it further for the reason that it calls for a conclusion on the part of the witness.

Trial Examiner Batten: Objection overruled.

123. To the action and ruling of the Trial Examiner in admitting and considering the testimony of May Fike with respect to conversations and actions of Fern Sigler over [fol. 6232] the objections of intervener and respondent, and in overruling the motions of intervener and respondent to strike the same, said testimony being heresay, self-serving, not binding upon intervener or respondent, incompetent, irrelevant and immaterial, the said testimony, objections, motions and rulings reading (Tr. pp. 1292-1294):

“Q. What, if anything, did Fern Sigler say to you about the union button?

Mr. Ingraham: I object to that as heresay.

Trial Examiner Batten: You may answer.

A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job.

She said, well, she was going to wear it anyway. And I said, “Well, I will lose mine too.” And she said, well, she didn’t think I would—I don’t remember her exact words, but something to that effect.

She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn’t in the same place mine was. That is the last I talked to her until the evening of the 23d.

Mr. Ingraham: I move that the answer be stricken out—I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self serving.

Mr. Lane: Intervener makes the same objection and the same motion to strike.

Trial Examiner Batten: Objection overruled—

Mr. Leary: (Interrupting): Now, I submit this is outside of the scope of the intervener’s interest.

Trial Examiner Batten: Just a minute. (Continuing)—and the motion to strike is denied.

Mr. Leary: Whose motion to strike is denied?

Trial Examiner Batten: Mr. Ingraham's motion to strike.

Mr. Lane: Was there a ruling on my motion?

Trial Examiner Batten: Yes, I said overruled. Mr. Leary, did you start to say something when I interrupted?

[fol. 6233] 124. To the action and ruling of the Trial Examiner in receiving and considering the testimony of May Fike hereinafter quoted, with respect to the Fern Sigler incident, and in overruling intervener's and respondent's motion to strike the same, said testimony being incompetent, irrelevant, and immaterial and insufficient to bind intervener or respondent, such testimony, motion and ruling reading (Tr. pp. 1303-1307):

"Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

A. Well, of course they were all hollering. I couldn't describe now which ones did say which.

Trial Examiner Batten: That is all.

Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

Trial Examiner Batten: The motion is denied.

Mr. Ingraham: Respondent makes the same motion.

Trial Examiner Batten: The motion is denied.

At Page 1306:

"Q. Have you told the Examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

A. They told her she couldn't belong to the International Union and work in their shop.

Mr. Lane: Intervener makes the same objection that has been heretofore made.

Trial Examiner Batten: The objection heretofore made?

Mr. Lane: To this same line of testimony, I made an objection to the nature of it, and I am renewing it now.

Trial Examiner Batten: Objection overruled.

Mr. Lane: In order not to burden the record, may I have a continuing objection?

Trial Examiner Batten: You mean as to this incident of April 23rd?

Mr. Lane: Yes sir.

Mr. Ingraham: Respondent moves to strike the answer [fol. 6234] out for the reason that it calls for hearsay testimony, and for the further reason that anything the employees said is not binding on the respondent.

Trial Examiner Batten: Motion denied.

Mr. Ingraham: And, Your Honor, may I have a continuing objection to this incident?

Trial Examiner Batten: Yes, to this incident."

125. To the action and ruling of the Trial Examiner in receiving and considering, and denying intervenor's motion to strike the following testimony of May Fike with respect to the instructors and the Fern Sigler demonstration, the said testimony being the conclusion of the witness, incompetent, irrelevant and immaterial and not sufficient to bind intervenor or respondent, the said testimony, motion and ruling reading (Tr. p. 1309):

"Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?

A. No, sir, they didn't.

Mr. Lane: I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

Trial Examiner Batten: It may stand as it is."

126. To the action and ruling of the Trial Examiner in receiving and considering, and in denying intervenor's and respondent's motions to strike testimony of May Fike with respect to the Fern Sigler incident hereinafter quoted, said testimony being hearsay, the persons making threats not being identified, not shown to have acted with the knowledge or authority of respondent, being insufficient to bind respondent or intervenor, incompetent, irrelevant

and immaterial, said testimony, motions and rulings reading (Tr. pp. 1310-1313):

"Q. Did you hear any threats made to Fern Sigler?

A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she couldn't work with them and belong to that union—to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

[fol. 6235] Mr. Ingraham: I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this third group, and has not identified anyone as making the remarks she has just stated.

Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

Q. (By Mr. Leary) Are you able to name any persons in the third group?

A. Ethel Carpenter was in all of them, and Mary Spröfera—I don't remember the names of all of them. I really knew more than that, but I don't remember the names of all of them. There was—I can't think of her first name, her last name is Hayward—

Q. Do you know where this person named Hayward worked?

A. I believe she either worked on the seventh or eighth floor, I don't remember which.

Q. Was she an operator?

A. Yes, sir.

Q. Can you name any other persons who were in any of the groups?

A. I don't believe I remember the names of them.

Q. (By Trial Examiner Batten) Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?

A. Well, Ether Carpenter and Mary Sprofera told her they didn't want her in there. I am not sure about who said "Throw her out the window." I think that was Mary Sprofera, but I am not sure about it.

Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

Trial Examiner Batten: Motion denied."

127. To the action of the Trial Examiner in receiving and considering any and all testimony of May Fike concerning the Fern Sigler incident, appearing in the transcript from pages 1291 to 1323, inclusive, for the reason that the identity of the participants was not shown; the authority of such persons, operators or instructors, to [fol. 6236] bind respondent or intervener was not shown; no knowledge, duty or power of the respondent to prevent or control the action of the employees in the premises was shown, all of same being incompetent, irrelevant and immaterial for the reasons stated in the objections appearing therein and being insufficient in other respects to bind the respondent or intervener, and no inference can be drawn that respondent or anyone in its behalf, or with its knowledge or authority thereby encouraged or discouraged membership in any union, or induced or aided the organization of intervener union.

128. To the action and ruling of the Trial Examiner in refusing to receive testimony offered by intervener with respect to the talk and excitement among the Donnelly employees with respect to the violence and commotion perpetrated by International Ladies' Garment Workers Union and other garment plants in Kansas City, and threats, reports and rumors of similar violence toward the employees of the Donnelly Garment Company; all of said evidence being competent, relevant and material to prove its effect upon the Donnelly employees, and the state of mind created among them, and to show the state of mind, fear and hysteria among said employees that was a principal cause for their action in forming their own union, the objections to said evidence and the rulings thereon appearing at pages 1416-1425 (and elsewhere throughout the transcript) in the following language:

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

Mr. Lane: This question I have asked was what she [fol. 6237] heard about the Donnelly plant as to what was going on.

Trial Examiner Batten: Well, Mr. Lane, I would like to have your reaction on this: supposing, for the sake of argument, that there was a lot of this going on. Certainly, the respondent can't be charged with—I mean by that, unless the respondent or one of its agents passed on this information for the purpose of discouraging membership in this union, then it doesn't make any difference how much the employees may have heard.

Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction; and attitude, as having some bearing upon why they took the action they did take on the part of the union.

Trial Examiner Batten: Mr. Lane, I will make the same ruling in that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

Now, I am not going into this organizational campaign that took in the City of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present the whole problem of this campaign that was going on by the union here in

Kansas City, but I can say now that I am not going to receive it in this hearing.

At page 1419:

Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

Mr. Tyler.

Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

[fol. 6238] Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of a Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

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At page 1422:

Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerney's or Gordon's, or anything of that sort.

Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, "Did anybody threaten you? Did anybody ever commit any violence as far as you were concerned?" I will receive that in this hearing; I don't want that in the form of an offer of proof.

At page 1424:

Mr. Lane: I want to make this further observation with respect to the question I asked:

I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by ideas of terrorism, which may or may not be true, nevertheless it is the state of mind which I want to show; and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union, whether founded upon fact or not.

Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

Mr. Lane: That was the purpose of my question, to show that fact.

Trial Examiner Batten: And that matter, of course, will be included in this offer of proof."

[fol. 6239] 129. To the ruling of the Trial Examiner receiving in evidence International Ladies' Garment Workers' Union Exhibits Nos. 4, 5, 6 and 7, over objections of respondent and intervener, being purported ledger sheets of the Kansas City Chair Rental Company, for the reasons stated in the objections, said objections and ruling being as follows (Tr. pp. 1459-1460):

"Mr. Langsdale: We offer Exhibits 4, 5, 6 and 7 in evidence:

Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any person authorized by the Donnelly Garment Company ordered any particular item on the list; that it is not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

Trial Examiner Batten: Mr. Patten.

Mr. Patten: Intervener objects for the reason that how the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and kept on one ledger sheet.

Trial Examiner Batten: The objections are overruled. They will be received."

130. To the action and ruling of the Trial Examiner in receiving and considering, over the objections of respondent and intervener, International Ladies' Garment Workers' Union Exhibits 8-A to 8-GG, purporting to be deposit slips of Kansas City Chair Rental Company, same being offered to prove from notations on said slips made by said Chair Company that respondent had paid chair rental bills of intervener, said exhibits being wholly incompetent, irrelevant and immaterial, not shown to have been made with knowledge or authority of anyone connected with respondent and wholly insufficient to bind either respondent or intervener, for the reasons stated in the objections, the objections and ruling reading (Tr. pp. 1478-1480):

"Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore

urged, including the fact that they are not the best evidence; that there is no showing by this witness—

Mr. Stottle: Well that is one of the objections, that it is not the best evidence and hasn't any sufficient relation to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

Trial Examiner Batten: That doesn't indicate that on these slips, does it?

Mr. Stottle: But the testimony taken together with these slips indicates that.

Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evidence.

Trial Examiner Batten: If there is no further objection, they will be received.

Mr. Patten: Intervener makes the same objection as the respondent.

Trial Examiner Batten: They will be received."

131. To the ruling of the Trial Examiner overruling respondent's motion to strike the evidence of witness Milton Slotkin and all exhibits from the records of the Kansas City Chair Rental Company, for the reasons stated in said motion, the motion and ruling reading (Tr. pp. 1483-1483):

"Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the

[fol. 6241] stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner to give any credence to the statements because they are so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

Trial Examiner Batten: The motion to strike is denied."

132. To the action and ruling of the Trial Examiner in receiving and considering testimony of witness Greenhaw with respect to Board's Exhibit No. 17, and receiving and considering said Exhibit 17 over the objections of respondent and intervener, the said testimony and objections reading (Tr. pp. 1598-1600):

"Q. I show you what has been marked for identification as Board's exhibit No. 17 and ask you to state briefly what that document is.

A. It was a record of the amount of letters written by the department that day, and who dictated them, and who wrote them. A few were written by the girls themselves; that is, form letters or letters that were of a similar nature; some of the girls, of course, would transpose those themselves."

At page 1599:

"Mr. Ingraham: Respondent objects to the introduction of Board's exhibit No. 17 for the reason that it is immaterial and irrelevant to any issue in this case. And, respondent moves that the witness' testimony be stricken out for the same reason.

Mr. Lane: Intervener makes the same objection and motion.

Trial Examiner Batten: Mr. Leary, what have you to say?

Mr. Leary: I believe there has been testimony regarding the membership of Miss Alexander and Miss Nobles in the Donnelly Garment Workers' Union, Mr. Examiner, and I believe this goes to show these persons were of a supervisory nature. There is no better proof in the world than to have this daily check-off; it is somewhat like an efficiency system the company uses to check up on the work done by even the stenographers in the office daily, all handled by the persons Alexander and Nobles.

[fol. 6242] Trial Examiner Batten: It will be received."

133. To the ruling of the Trial Examiner receiving and considering in evidence Board's exhibit No. 18, being the purported minutes of witness Greenhaw, over the objections of respondent and intervener, for the reason that said document was not sufficiently identified and no showing was made that the document had been in the custody of the witness before the time of trial, the said objections and ruling reading (Tr. p. 1613):

"Mr. Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they "doctored" those minutes, and now we have what she says is a carbon copy of the minutes she turned over to Marjorie Green, and Marjorie Green produces what she says is the original.

Mr. Lane: Intervener objects to it on the ground that it is not identified.

Mr. Leary: In what particular?

Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

Trial Examiner Batten: It will be received."

134. To the action and rulings of the Trial Examiner in receiving and considering the following testimony of witness Greenhaw over objections of intervener and respondent and in overruling motions of intervener and respondent

to strike said testimony, the said testimony, objections and rulings reading (Tr. 1619-1624):

"Q. (By Mr. Leary) During the months of March and April and May, 1937, Mrs. Greenhaw, did you note anything unusual in the conduct of Miss Rose Todd while she was on the tenth floor?"

Mr. Lane: That is objected to as calling for a conclusion.

[fol. 6243] Trial Examiner Batten: You may answer.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Overruled."

At page 1620:

Trial Examiner Batten (interrupting): Well, now, you can just say "yes" or "no" to that question, whether you did.

A. Yes.

Q. (By Mr. Leary) What was it that you noticed, Mrs. Greenhaw?

Mr. Ingraham: I make the same objection.

Trial Examiner Batten: Same ruling.

Mr. Lane: Intervener makes the same objection.

A. I noticed that she was more than usually active in contact with the executives of the company.

Mr. Lane: I move to strike the answer out as a mere conclusion of the witness.

Trial Examiner Batten: It may stand.

Mr. Ingraham: Same objection. Respondent makes the same objection—the same motion to strike.

Trial Examiner Batten: Motion denied.

At page 1622:

"Q. (By Mr. Leary) Did this occasion when you saw the representative group of employees with Miss Todd to

the tenth floor occur after the meeting when the Donnelly Garment Workers' was formed—Donnelly Garment Workers' Union was formed?

Mr. Patten: Just a moment, please, I don't believe she has testified she saw a group of employees with Miss Todd. The question assumes she has so testified.

Mr. Leary: I submit her testimony was that it was a representative group from the employees all over the plant.

Q. (By Trial Examiner Batten) Was Miss Todd with this group?

A. I couldn't testify as to that, but I remember the occasion because it was rather unusual for people from the factory to be brought up on the tenth floor.

[fol. 6244] Q. Now, do you remember about when this was?

A. I remember, because a meeting took place the same day.

Q. Well, what meeting?

A. I am assuming it was the meeting—

Q. (Interrupting) Well, tell me what occurred at the meeting that you say occurred the same day.

A. There was a committee was announced, who would represent the employees as—I don't remember how they were designated, but they were to be union representatives among the employees.

Q. (By Mr. Leary) Was it before that meeting, Mrs. Greenhaw, that you saw this group of employees up on the tenth floor?

A. Yes.

Q. In Mrs. Reed's office?

A. Yes.

Mr. Lane: I move to strike it out for the reason that the time is not fixed.

Trial Examiner Batten: It may stand."

[fol. 6245] 135. To the rulings and action of the Trial Examiner in refusing to except the testimony of intervenor's members that they were not dominated and that they did form the intervenor union of their own free will, and in denying the respondent's motion, based upon said

ruling, to dismiss the complaint that intervener is a dominated union, the said action and rulings being necessarily predicated upon the Trial Examiner's belief that each and all of said witnesses would testify falsely, the effect of said action and ruling being to deprive respondent and intervener of the opportunity to introduce competent, relevant and material testimony to disprove the charges made in the complaint and show the true wishes of intervener's members as to bargaining representation and union affiliation, and serving to deprive intervener and respondent of a fair and impartial trial, of the rights guaranteed to intervener's members under Section 7 of the National Labor Relations Act, and of their freedom of association and property rights in their contracts with respondent within the meaning of the Fifth Amendment of the Constitution of the United States, the said action, exceptions thereto, motion and ruling thereon reading (Tr. pp. 1655-1656):

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

Trial Examiner Batten: That is exactly what I mean.

Mr. Ingraham: Of course, respondent excepts to the ruling.

Trial Examiner Batten: Well, I assume that the intervener will, too.

Mr. Langsdale: You have nothing to except to.

Mr. Lane: Yes, we do. We assume we have an exception.

[fol. 6246] Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to do it. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

I am not going to receive it, and—

Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

Trial Examiner Batten (interrupting): Do you want to make that motion?

Mr. Ingraham: Yes.

Mr. Langsdale: It appears to me this is my offer; not yours.

Trial Examiner Batten: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

Mr. Stottle: Well, in view of the Examiner's statement as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

Trial Examiner Batten: Motion denied.

136. To the motion and ruling of the Trial Examiner in overruling the motion of respondent and intervener to the following leading and suggestive questions, and in receiving and considering the answers of the witness Greenhaw thereto, said questions, objections and answers reading (Tr. pp. 1661-1666):

"Q. Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was the meeting at which the Donneily Garment Workers' Union was formed, if you heard Miss Todd say anything at that meeting about the—

Mr. Ingraham (interrupting): I object—

Q. (By Mr. Langsdale, continuing)—officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

Mr. Ingraham: I move the question be—I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask [fol. 6247] the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

Mr. Langsdale: It seems to me it—

Mr. Patten (interrupting): The intervener makes the same objection.

Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't, of course, it won't.

Mr. Langsdale: I am willing to take that chance.

Trial Examiner Batten: I think under my ruling that is your privilege.

Mr. Langsdale: Will you read the question, please, Mr. Reporter.

(Whereupon, the question was read by the reporter.)

Mr. Lane: Mr. Examiner, the intervener further objects for the reason that that question was asked by counsel for the International Ladies' Garment Workers' Union by reference to some statement which, from his previous statement, was made by this witness in the presence of some stenographer, outside of the presence of anybody representing the Donnelly Garment Workers' Union. The statement itself is hearsay and in no sense binding upon the intervener, and for that reason is an improper document to be used to refresh this witness' memory. The question itself calls for hearsay and cannot be binding on the intervener.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: You may proceed.

Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. She did make such a statement.

At page 1665:

Q. (By Mr. Langsdale) Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated she would close her shop before she would permit it to be unionized.

Mr. Ingraham: I object to the question for the same reason [fol. 6248], so that I have objected to the previous question that Mr. Langsdale asked when he was reading from this document that he has in his hand.

Mr. Lane: Intervener makes the same objection.

Trial Examiner Batten: I will overrule the objection.

A. Mrs. Reed did state she would close her factory before she would permit it to be unionized.

Q. (By Mr. Langsdale) Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

Mr. Ingraham: Same objection.

Trial Examiner Batten: Objection overruled.

A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities."

137. To the action and ruling of the Trial Examiner in denying the motions of respondent and intervener to strike the testimony hereinafter quoted of witness Greenhaw and in receiving and considering said evidence, the same being not responsive to the questions and stating conclusions not founded upon any fact testified to by the witness, and too vague and indefinite to be binding upon either respondent or intervener, said testimony, objections and motions to strike reading (Tr. pp. 1681-1682):

"Q. Now, who are some of the other department heads that were engaging in coercion?

A. Of course, that is a hard thing to answer.

Q. Well, you are testifying now. Just give the names, please, Mrs. Greenhaw, of these people that were engaging in coercion.

A. Because it was a general feeling—

Q. (interrupting) I am not—just answer—

Trial Examiner Batten (interrupting): Just a minute. Let her finish.

Mr. Ingraham: I object to it as not responsive.

Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

[fol. 6249] Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

Trial Examiner Batten: Well, let her answer. We can't tell; Mr. Ingraham, until she gets through.

Q. (By Trial Examiner Batten) What were you saying?

A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times by the officials of the company, and I am sure that for years the company had been building up that sort of a thing.

Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

Trial Examiner Batten: It may stand.

Q. (By Mr. Ingraham) I again ask my question: Will you name the department heads that were engaging in coercion?

A. I am sure that you couldn't have worked there and be a department head if you hadn't."

138. To the action and rulings of the Trial Examiner in overruling the objections and motion to strike of intervener to the following leading and suggestive questions, and in receiving and considering the answers of the witness Greenhaw thereto, said questions being a continua-

tion of the questions excepted to in intervener's exception No. 136, the attorney for the International Ladies' Garment Workers' Union putting the answers squarely in the witness' mouth, and concerning facts as to which the witness' previous testimony showed that her memory could not have been refreshed, said questions, objections, answers, motion and ruling reading (Tr. pp. 1712-1714):

"Q. (By Mr. Langsdale) Mrs. Greenhaw, Mr. Ingraham asked you before the recess about your testimony that a group of employees visited Mrs. Reed's office on certain occasions. During the recess did you examine the statement that you gave to Mr. Walsh?

A. Yes.

[fol. 6258] Q. Did that refresh your memory?

A. Yes.

Q. Will you tell me who was in the group that went into Mrs. Reed's office, on that morning?

A. There were some whose names I didn't know, but I recall that three whom I knew were Mr. Fred Brown, and I think Mr. Atherton was one, and Miss Todd.

Mr. Lane: Now, intervener objects and moves to strike that out for the reason that has been heretofore stated with respect to that type of examination and question, and for the further reason no date has been fixed.

Mr. Langsdale: I will get to that.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Langsdale) Did this statement refresh your memory as to when you saw Miss Rose Todd, Mr. Fred Brown, and Mr. Hobart Atherton going into Mrs. Reed's office?

A. I was at the time of the formation of the union, I believe.

Mr. Lane: Just a moment. I object to that and move that it be stricken for the reason that she has stated in response to my questions that she has no recollection of the time when the union was formed.

Mr. Langsdale: I submit her recollection has been refreshed since reading this statement.

Mr. Lane: She has not read that since I examined her.

Trial Examiner Batten: She may answer the question. Or, has it been answered?

The Reporter: It has been answered.

Q. (By Mr. Langsdale) Let me ask you, in the statement you gave to Mr. Walsh you stated:

"Either on the day or the day before the suggestion was first made that there should be a company union organized I saw a group of seven or eight employees going into Mrs. Reed's office." Is that right?

A. Yes.

Mr. Laro: Now, Mr. Examiner, may I have a continuing objection to all questions asked by counsel for the International with respect to the statement he holds in his hand, and questions where he reads from the statement, on the grounds I have heretofore stated?

Trial Examiner Batten: Yes, you may have a continuing objection.

Q. (By Mr. Langsdale) Then, you also state: "I saw [fol. 6251] a group of seven or eight employees going to Mrs. Reed's office. They were in there at least an hour, and among the group I distinctly recall Rose Todd, Fred Brown, and Hobart Atherton, all of whom took an open and active part in urging the employees to form a company union, all of whom were subsequently selected as officers of the union."

You made that statement, did you not?

A. Yes.

Q. That was in the fall of 1937?

A. That is right."

139. To the ruling of the Trial Examiner receiving in evidence Trial Examiner's Exhibit 1, being a memorandum from which the question excepted to in Intervener's exceptions Nos. 136 and 138 were read, and in overruling intervener's and respondent's objection thereto, the record with respect to such actions and rulings reading (Tr. pp. 1714-1719):

" * * Of course, I want that marked as an exhibit. It has always been my practice, whenever an attorney examines a witness from a memorandum or statement they have previously made, to ask to have that made a part of the record.

Mr. Langsdale: I have only a copy here, Mr. Examiner, Shall I identify it and offer it?

Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

(Thereupon the document above referred to, having been marked "Trial Examiner's Exhibit No. 1" was received in evidence.)

Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissible for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

Trial Examiner Batten: It is received for whatever it purports to be.

Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent recollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

At Page 1717:

Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's Exhibit No. 1 for the reason that it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand

now, and her own testimony should be the testimony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is—purports to be a carbon copy of some statement which she may have signed.

Trial Examiner Batten: May I see it a moment?

Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

Mr. Langsdale: I submit that the witness's memory can be refreshed from a diary, or any other memorandum that the witness may have.

Q. (By Trial Examiner Batten) Mrs. Greenhaw, will you look this over and tell me whether or not that is a statement that you made, and if so, when?

A. Yes, this is a statement I made.

Mr. Langsdale: Read it through, will you, Mrs. Greenhaw, so you can testify from all of it.

Mr. Lane: I object to the Examiner's question for the reason that this document is not the best evidence, and whether this witness can, by reading it, refresh her recollection or not, could not supply the defect; it does not cure the defect that this is not the best evidence.

Trial Examiner Batten: The objection is overruled. I am merely trying to get into the record whatever it is. I don't know what it is, but whatever it is, she apparently testified from it, and as such, she is entitled to, whether it is an affidavit or a memorandum or whatever it is, and I merely want it in the record so that it will show what it was that refreshed her memory.

Mr. Stottle: The respondent adds to its objection that it would be prejudicial to have it in the record, the whole document, which—only a portion of it is purportedly received, because whoever reads the record to ascertain those portions must necessarily read the whole document.

Trial Examiner Batten: Mr. Stottle, do you mean by that that it has always been a practice to cut part of something out which is introduced for a certain purpose, and that you never introduce the whole of anything?

[fol. 6253] Mr. Stottle: No, I don't mean that. I just say that it would be necessary for anyone, in reviewing the record, yourself or anyone else, to read this whole document in order to read the portions that you are admitting, and that it would be prejudicial to the respondent to have a document in there which is not the testimony of this witness.

Trial Examiner Batten: Well, the objection is overruled.

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Continuing at page 1720:

Trial Examiner Batten: It will be received.

(The document heretofore marked as "Trial Examiner's Exhibit No. 1" was received in evidence.)

Trial Examiner Batten: It is not received as evidence; merely as a memorandum that was used for that purpose."

140. To the action and ruling of the Trial Examiner in overruling the motions of respondent and intervenor to strike the following testimony of the witness Greenhaw, and in receiving and considering such testimony, the testimony, motion and ruling reading (Tr. pp. 1729-1730):

"Q. (By Mr. Langsdale) Did any incident occur while you were there in which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?

A. There were so many incidents that I can hardly recall them.

Q. Can you recall any one?

A. There was hardly a day—

Mr. Shepard (Interrupting): Your Honor, I ask that these answers be stricken.

Mr. Leary: Why?

Trial Examiner Batten: I will not strike them.

Mr. Stottle: They are so general, Your Honor—

Trial Examiner Batten: But, Mr. Stottle, if you will just look back toward the beginning of this hearing you will find plenty of answers that are general. I am not going to start now—

Mr. Lane: (Interrupting) Intervener objects on the ground that it is not responsive to the question, and it is not a statement of any facts.

Trial Examiner Batten: Mr. Lane, do you mean an attorney who is not asking a question can object on the [fol. 6254] ground that it is not responsive? Are you, the attorney who does not ask the question, going to object that it is not responsive?

Mr. Lane: I think if the witness gives an answer to Mr. Langsdale's question that I think is not responsive, I have a right to object, and I do object.

Trial Examiner Batten: Objection overruled.

Mr. Stottle: Respondent objects on the ground that it calls for a conclusion. There was no definition of the word "coercion", and the answer she made was that it was of a general nature and did not state the facts, which you stated she should do.

Trial Examiner Batten: Objection overruled.

Mr. Langsdale: Read the question."

141. To the action and ruling of the Trial Examiner in overruling intervener's objection; and in receiving and considering the following testimony of the witness Greenhaw, the question, objection and answer reading (Tr. pp. 1733-1734):

"Q. (By Mr. Langsdale) Did you ever hear Mr. Keyes talk to the employees about loyalty to the company?

A. Yes.

Mr. Lane: That is objected to as leading.

Trial Examiner Batten: Now, Mr. Lane, you know my ruling on leading questions; I have made it so many times. You may have a continuing objection to leading questions.

Mr. Lane: The Board, of course, will not know what I consider leading questions unless I make my objection.

Trial Examiner Batten: Of course, I thought it would save all of these interruptions.

Mr. Lane: Mr. Examiner, I would be very glad not to make that objection at all if there were any way of making it known what I regard as leading questions but unless I make my objection, I don't see how the Board or anybody else can tell what I regard as leading questions."

[fol. 6255] 142. To the action and rulings of the Trial Examiner in overruling the objections of Intervener and Respondent to all testimony in regard to the Loyalty League, for the reasons stated in the objections hereinafter quoted and for the further reason that all testimony offered is insufficient to bind respondent or intervener. Said exception is taken to the following testimony of the witness Hartman and as a continuing exception to all other testimony pertaining to the Loyalty League even if the same be not herein quoted (Tr. p. 1769 and succeeding pages):

"Q. Showing you your bank statement for the month of March 1937, is [—] not a fact that a deposit of \$1,000 was made on March 30, 1937? A. That is right.

Mr. Stottle: Just a moment, Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

We think it is encumbering the record to go into these activities of the Loyalty League.

We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

Trial Examiner Batten: That may be incorporated.

Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the union is immaterial and irrelevant.

[fol. 6256] Trial Examiner Batten: Overruled. You desire a continuing objection, Mr. Patten?

Mr. Patten: I do.

Q. (By Mr. Leary) Your testimony is, is it not, Miss Hartman, that in March, March 30th, you deposited \$1,000?

A. Yes, sir.

Q. In the name of the Nelly Don Loyalty League?

A. Yes, sir.

Q. Now, where did that \$1,000 come from?

A. Miss Rose Todd handled that entirely. She came to me and told me that a few employees had been talking to her—

Q. (Interrupting) No, I don't mean that. Where did the \$1,000 come from, do you know?

A. I don't understand your question.

Q. Where did the Nelly Don Loyalty League obtain the \$1,000 in order to deposit it in a checking account?

A. I am telling you that now. May I explain?

Q. Well, do you know where they got it?

A. Well, it was borrowed under the Loyalty League name.

Q. It was borrowed from the First National Bank?

A. That is right.

Q. Was an application for a loan of \$1,000 to the First National Bank made?

A. That is right.

Q. And was a note given to the union in the amount of \$1,000?

A. To the union?

Q. I beg your pardon. Was a note given to the bank by the union in the amount of \$1,000?

A. No, not by the union.

Q. I beg your pardon. By the Loyalty League?

A. Yes.

Q. And do you have that note?

A. Yes, I do.

[fol. 6257] Q. May I see it, please?

(Whereupon, the document above referred to was handed by the witness to Mr. Leary.)

Q. (Continuing) Do you have any objection, Miss Hartman, to our offering this note at this time for the record, and then having it photostated and withdrawn so that the original may be returned to you for your records?

A. Yes, sir.

Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official records of the Nelly Don Loyalty League that you just referred to in your testimony?

A. That is right.

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 19" for identification.)

Mr. Leary: Board offers its Exhibit 19.

Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues here, and also that it is not binding on the respondent in any way.

Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

Mr. Stottle: Well, I thought it might, but I wasn't sure that it would.

Mr. Patten: The intervener desires its continuing objection to apply to the note.

Trial Examiner Batten: It will be received; subject to those objections.

(The document heretofore marked as "Board's Exhibit No. 19" was received in evidence.)

And continuing to page 1793:

"Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

Mr. Stottle: Respondent makes its continuing objection to these exhibits.

Trial Examiner Batten: You may have a continuing objection.

[fol. 6258] Mr. Lane: We make our general objection.

Trial Examiner Batten: That is, the same continuing objection you have made?

Mr. Lane: Yes.

Trial Examiner Batten: I will reserve decision on the offer.

Q. (By Mr. Langsdale) Miss Hartman, I hand you this sheet of paper which has been marked by Board's exhibit No. 22, which purports to be a record of an account kept in the First National Bank.

A. That is right.

(Thereupon the statement above referred to was marked for identification "Board's Exhibit No. 22.")

And continuing to page 1802

And including the ruling of the Trial Examiner receiving in evidence Board's Exhibits 20, 21, 22, 23, 24 and 25 (Tr. p. 1841-1842):

"Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

"Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both, that is, your continuing objections.

(The document heretofore marked as "Board's Exhibit No. 20" was received in evidence.)

Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections."

And including the ruling of the Trial Examiner receiving in evidence Board's Exhibits 22, 23, 24-A, 24-B and 24-C, [fol. 6259] [said] said offer, renewed objections of respondent and intervener reading (Tr. pp. 1856-1858):

"Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24C."

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"Mr. Stottle: Respondent makes its continuing objection to any of those exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

▲ Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates that are found to be incorrect.

Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

Trial Examiner Batten: Well, they will be received.

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At page 1858:

"Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24."

143. To the action and ruling of the Trial Examiner refusing to admit in evidence respondent's Exhibit 2, being copies of contracts of the International Ladies' Garment Workers' Union with other garment manufacturers in Kansas City, Missouri, for the purpose of showing by comparison of provisions therein similar to provisions in the intervener's contracts, that intervener's contracts were the result of bargaining, containing provisions more advantageous to intervener, said Exhibit 2 being competent, relevant and material for said purpose, the offer, objection and ruling reading (Tr. p. 1828-1829):

"Q. I will hand you respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts negotiated in 1937, but have since been renewed with exchanges. The others are the contracts that are in force now.

Q. What are the names of the other companies?

A. Missouri, Gernes, and Gordon.

Mr. Ingraham: Respondent offers in evidence exhibit No. 2.

Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and irrelevant. It has no bearing on the issues in this matter that we are trying now.

Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Examiner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment

Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the contracts between the Donnelly Garment Workers' Union and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

And continuing on page 1830:

Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

Mr. Leary: That is it, yes.

Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary."

[fol. 6261] 144. To the action and ruling of the Trial Examiner excluding the following question with reference to prices and minimum wages for piece workers in the Gernes Garment Company—International Ladies' Garment Workers' Union contract (Respondent's Ex. 2) said question being competent, relevant and material to show by comparison that intervenor's contracts were obtained by genuine bargaining, the said offer and ruling reading (Tr. p. 1831):

"Q. (By Mr. Ingraham) I will ask you if that contract did not contain the provision that "Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than \$15 per week capita."?"

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the question for all of the rea-

sons heretofore stated as objections to the offer of the contract itself.

Trial Examiner Batten: Sustained."

145. To the action and ruling of the Trial Examiner receiving in evidence Board's Exhibits Nos. 29A and 29B over the objection of respondent and intervener, the offer, objections and ruling reading (Tr. pp. 1845-1846):

"Mr. Leary: Mr. Examiner, I offer for the record what has been marked for identification as Board's Exhibit 29-A and 29-B, which is a computation of the salaries received by certain individuals who are officers of the Donnelly Garment Workers' Union, such computations of these persons' salaries being from January 15, 1937 to and including December 31, 1938.

At page 1846:

"Trial Examiner Batten: You want to proceed with your objection, Mr. Stottle?

Mr. Stottle: Yes. Respondent wants to object to the materiality of this, assuming that it is correct.

Mr. Tyler: Intervener makes the same objection. It has no tendency to prove or disprove any issues in this case.

Trial Examiner Batten: It will be received."

[fol. 6262] 146. To the action and ruling of the Trial Examiner overruling respondent's and intervener's objections and motions to strike (NRA-JMC Ex. 2A, B and C) Board's N.R.A. testimony contained in Board's Offer of Proof (NRA-JMC Ex. 1A-BBBB), being the testimony of witnesses Ellen Fry, Thelma Owen, Glynn Brooks, Mamie Tubbesing, Elizabeth Gates Reeves, Lillian Wales, Frances Riedel, Pauline Lutz, Virginia Stroup, Dewey Atchison, Gladys Elledge Richardson, R. L. Blume, Meyer Perlstein, Lillian White, Marie Patton, Bessie Niemeyer, Ella Mae Guerrant Hyde, Mrs. James A. Reed, taken in the case styled "International Ladies' Garment Workers' Union, complainant, vs. Donnelly Garment Company, respondent", No. 160, before the N.R.A. Regional Labor Board, Twelfth District, and receiving and considering said evidence, the

said testimony, objections and motions to strike being incorporated herein by reference. The ruling complained of is further excepted to by intervener because of indefiniteness and uncertainty, making it impossible for intervener to determine what evidence is accepted and what excluded, said ruling+reading (Tr. pp. 1861-1863):

"The objection is overruled and the motion to strike is denied, and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections.

I want to say that proviso is attached to all of the rulings and will be hereafter attached to all of the testimony by the intervener, for the reason that in reading over the testimony I notice there have been some questions included that refer to the so-called loyalty pledge which was signed by all of the employees, or refers to some other matters which during the course of the proceedings I have stated I would not entertain evidence on.

I didn't want any of the attorneys to think that because there were a few questions in there involving some of those matters that I was in any way reversing my rulings on those subjects.

Mr. Ingraham: Are you receiving in evidence the testimony of the different named individuals that testified in [fol. 6263] the N.R.A. case with regard to their discharge and these matters they testified to in the N.R.A. proceedings?

Trial Examiner Batten: I am receiving it in accordance with this ruling, the testimony in exhibit No. 1, subject to that proviso which I stated.

Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

I have gone through the evidence and read it carefully and I find in some instances indirect references to some of the matters which I have said I would not receive evi-

dence upon, and I just want to make it clear that I am not reversing my rulings in opening up those two or three subjects for receipt of further testimony.

If there is any question about it after you go over it I will be very glad to clarify it.

Mr. Ingraham: Of course it will be necessary to go over that before we proceed with [out] evidence."

147. To the action and ruling of the Trial Examiner in overruling respondent's and intervenor's objections and motions to strike (NRA-JMC Ex. 6A, B and C) Board's Judge Miller case testimony contained in Board's offer of proof (NRA-JMC Ex. 5A-5GG, consisting of 33 pages), exception here being taken to each and every ruling adverse to respondent or intervenor made by the Trial Examiner throughout said exhibit, and in receiving and considering said evidence, the said testimony, objections and motions to strike being incorporated herein by reference. The ruling complained of is further excepted to by intervenor because of indefiniteness and uncertainty, making it impossible for intervenor to determine what evidence is accepted and what excluded, said ruling reading (Tr. P. 1864):

"N. R. A.-Judge Miller case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

Exhibit No. 6-A, b and C, the objections and motions to strike, of the respondent and intervenor.

Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings [fol. 6264] heretofore made with reference to the introduction of evidence upon certain subjects."

148. To the action and ruling of the Trial Examiner in overruling respondent's and intervenor's objections and motions to strike Board's Judge Miller case testimony contained in Board's offer of proof (NRA-JMC Ex. 9A to 9CC) the objections of the respondent appearing to certain questions throughout the testimony of 29 pages, and the intervenor's objections and motion to strike being a sep-

arate document (NRA-JMC Ex. 10A), exception here being taken to each and every ruling adverse to respondent or intervener made by the Trial Examiner throughout said exhibit, and in receiving and considering said evidence, the said testimony, objections and motion to strike being incorporated herein by reference. The ruling complained of is further excepted to by intervener because of indefiniteness and uncertainty, making it impossible for intervener to determine what evidence is accepted and what excluded, said ruling reading (Tr. p. 1865):

"9-A to 9-CC is certain testimony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects. The objections being marked 10A, consisting of one sheet, and the rulings entered thereon."

[fol. 6265] 149. To the action and rulings of the Trial Examiner in denying the motions of respondent to dismiss (Board's C 1-FFFF, and 1-GGGG) made at the close of the Board's and International Ladies' Garment Workers' Union case, for all the reasons stated in said motions, which are incorporated herein by reference, and for all the reasons stated orally and appearing in the transcript at pp. 1873-1891, the said motions having been made and offered (Tr. pp. 1872-1873-1874) as follows:

"Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

Trial Examiner Batten: That will be marked Board's exhibit No. 1-FFFF.

(Thereupon the motion above referred to was marked for identification "Board's Exhibit No. 1-FFFF".)

Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

At page 1874:

Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

Trial Examiner Batten: The first is a general motion and this is a specific motion.

Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

(Thereupon the motion above referred to was marked for identification "Board's Exhibit No. 1-GGGG".)

Trial Examiner Batten: Mr. Stottle, do you want to make a statement with respect to the motion?

Mr. Stottle: Yes, I would like to.

Respondent is not making this motion to dismiss as a formal matter, either the one to the case as a whole or these to the second paragraph, but really thinks there has not been sufficient evidence to support a report by the Trial Examiner finding the respondent is guilty of any [fol. 6266] of the charges alleged, or any judgment against the respondent in this proceeding.

But, irrespective of the motion as a whole, as to the second paragraphs, respondent desires to call attention to certain ones of them."

and having been denied (except as to subparagraphs d, g, g-l, k, i, n, o and p of the amended complain) in the third paragraph of page 3 of the Intermediate Report.

150. To the action and rulings of the Trial Examiner in denying the Intervener's demurrer to the evidence of the Board and International Ladies' Garment Workers' Union, and Intervener's motion to dismiss the complaint, both made orally at the close of the evidence offered by the Board and the International Ladies' Garment Workers' Union, for the reasons stated therein, the said demurrer and motion reading (Tr. p. 1873):

"Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence introduced, if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Workers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any decree, order or judgment affecting the rights and interests of the intervener.

and continuing at Tr. pp. 1890-1891:

Trial Examiner Batten (interrupting): Mr. Tyler, I think you said you had some motions to make orally.

Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

That no basis has been laid for any finding that the company coerced or intimidated or influenced any employee in joining the Donnelly Garment Workers' Union;

And that no basis has been laid for any possible finding that the company contributed, directly or indirectly, fi-

nancial aid or other aid to the Donnelly Garment Workers' Union;

No basis has been laid that the union is not a bona fide labor union, with all of the rights guaranteed such union under the Wagner Act;

And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees and is not entitled to representation of all of the employees in collective bargaining.

Trial Examiner Batten: Those additional reasons, I presume you call them, Mr. Tyler—

Mr. Tyler: Yes.

Trial Examiner Batten: (Continuing)—will be considered in connection with the disposition of the motion."

and having been denied in the third paragraph of page 3 of the Intermediate Report.

151. To the action and rulings of the Trial Examiner in permitting the Board and the International Ladies' Garment Workers' Union to enter into the trial and attempt to prove the allegations of the complaint without affirmatively showing, by direct affirmative evidence by witnesses and testimony produced by them, a prima facie case justifying the filing of the charges and the issuing of the complaint, and in permitting the Board and the International Ladies' Garment Workers' Union to proceed by attempting to secure evidence justifying said complaint and charge by entering at the trial upon a fishing expedition against respondent and intervenor, subjecting respondent's employees and intervenor's members to prolonged, minute and exhaustive cross examination, first by the Board's counsel and then by the counsel for the International Ladies' Garment Workers' Union, and in refusing to hold the Board and the International Ladies' Garment Workers' Union to be bound by testimony adverse to them given by said witnesses upon the erroneous and [fol. 6268] prejudicial assumption that all such adverse testimony would be false and all favorable testimony true, the filing of such charge and issuing of such complaint without substantial evidence, and the method of procedure

permitted in the attempt to secure the same, amounting to a persecution of respondent and intervener and a denial of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States. Intervener excepts thereto and to the rulings of the Trial Examiner overruling the objections of respondent and intervener at Tr. pp. 227-229:

"Mr. Tyler: If the Examiner please, I object to the leading form and cross-examination form of the questions and ask that proper form of direct examination be followed by the Board.

Trial Examiner Batten: He may proceed. I think I said on the opening day, Mr. Tyler, that I am not going to try to tell the attorneys how to ask their questions. You may proceed, and if you testify for the witness, why, it simply means that no weight can be given to the testimony, that is all, so you attorneys will have to assume the responsibility for the method in which you proceed on that. You may proceed.

Mr. Langsdale: May I suggest at this time, because this matter will come up, in view of the Examiner's thought about it, that this witness can certainly be classed as an adverse witness, and leading questions are always permissible in that character of witness.

Trial Examiner Batten: Mr. Langsdale, in my hearings I don't class any of the witnesses any way. I mean, after all, we are not bound by the rules of evidence and why be bound by any technical proceeding of the court. We are interested in getting all the facts we can get, and it is immaterial to me whether it is an adverse witness or your witness or the respondent's witness. If we get the information we need here, that is the thing we are interested in.

Mr. Langsdale: I wish to make my point, and I won't go back to it. The vice of a leading question is that when you have your own witness on the stand and put the answer in her mouth and she says "Yes, sir" or "No", then the Examiner has a right to, and should have a right to disregard that, but if an adverse witness is on the stand and gives an adverse answer, it goes to the credibility of the witness, which is on a different basis.

Trial Examiner Batten: We will proceed on the basis I have just explained.

[fol. 6269] and at 488-490:

Q. And who is Mrs. Nichols?

A. She works in the production department.

Q. Is that Lulu Nichols?

A. Yes, sir.

Q. Or Beulah Nichols?

A. Lulu.

Q. And is she an efficiency expert or does she work with time study or wage rates?

A. She is not an efficiency expert that I know of.

Q. Does her work consist of addressing and fixing piecework prices?

A. Yes, sir.

Mr. Lane: If your Honor please, I object to the leading nature of all these questions. I think he should let the witness testify to those things instead of framing the answers in his questions.

Trial Examiner Batten: Well, I don't know as I will interfere with it. You attorneys will have to assume the responsibility if you ask her questions and answer them at the same time, then they don't mean anything.

Mr. Ingraham: Well, your Honor, I object because I understood counsel to say he was going to examine this witness about minutes. Now, he is apparently putting this witness on to examine her about everything in connection with the case; and I don't think it is proper for the Board to take our witnesses and put them on the witness stand. I think they should first, at least, put on their case, the witnesses that they have. This is no more than cross-examination.

Mr. Foster: Mr. Examiner, I believe I have the privilege of finding out who this witness is and what her duties are.

Mr. Shepard: If your Honor please, this witness certainly couldn't testify to the duties of Mrs. Nichols.

Trial Examiner Batten: Of course, I assume that unless a witness is shown to be qualified to testify about a matter they testify about, even if they do answer, probably it doesn't mean anything.

Mr. Ingraham: But inquiring about this witness' duties, I can't see how he is getting into that, about asking about Mrs. Nichols.

Trial Examiner Batten: Well, he may proceed. This witness said she worked for Mrs. Nichols."

[fol. 6270] And at 491-492:

"Q. Were there any other stenographers on the committee?

A. I don't believe so.

Q. Now, how did it happen that you were a member of this committee?

A. I was elected.

Q. And who elected you?

A. I was elected at a meeting.

Mr. Tyler: If the court please, I object to that. He is not laying any basis for these meetings, for the examination as to these minutes, which is the purpose for which he has called this witness out of turn. If he puts on witnesses, and cross-examines them by leading questions, I have no objection, providing he abides by the regular rules that he certifies the truthfulness of those answers, which is the circumstances of his proceeding. If he is putting this witness on solely for the purpose of examining as to the minutes, I submit what he is asking now is not any necessary or proper basis for that.

Mr. Foster: Mr. Examiner, I submit the Board is not bound by any of the answers of this witness. She is a hostile witness.

Trial Examiner Batten: Now, Just a moment. I said once in this hearing I am not going to try to determine what kind of witnesses there are. The thing the Board is primarily interested in are the facts. It don't make any difference to the Board or to the Examiner where we get the facts, and we want all the facts, whether they come from the Board or the union or the intervener or the re-

spondent. I am not going to try to distinguish between witnesses."

and at 650-654:

"Mr. Lane: Now, if the Examiner pleases, before Mr. Langsdale begins any examination of this witness, I desire to object to counsel for the International Ladies Garment Workers' Union being permitted to interrogate this witness or to cross-examine this witness, for the reason that counsel for that organization, the claimant in this case, have during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's counsel of this witness, to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for the purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double [fol. 6271] cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination [as] this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination and—

Trial Examiner Batten: (Interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in courts of law, and which should obtain in administrative tribunals as to be a negation of the rules of fair play, as to deprive the intervenor in this case of due process.

At page 654:

I don't think there is anything to this argument, in any form or fashion. I am requesting all of you to cooperate with each other in every way possible to expedite the case.

I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed."

And at 686-688:

"Trial Examiner Batten: Mr. Langsdale, I just can't see that we are going to have to go all over these meetings and these matters again.

Mr. Langsdale: Well, if it pleases the Examiner, I am not going to spend a lot of time on it, but I think that it is necessary for me to conduct this examination the way I think it ought to be conducted, at least, refer to some of those things very briefly to bring out what I have in mind.

Trial Examiner Batten: I have no objection to you examining this witness on matters that were not covered in the examination by Mr. Leary. I have no objection to you asking one or two questions leading up to it, but I must say now that I don't propose in this hearing that we are going to have to go through all of these matters twice. So, I am asking you—

Mr. Langsdale (Interrupting): I don't propose to attempt to do that, but if the Examiner—as the Examiner, of course, knows, that sometimes it is necessary to pick up a link here and there to get the point you have in mind.

Trial Examiner Batten: I have no objection to your asking a question or two of that sort.

[fol. 6272] Mr. Langsdale: That is the sort this one is.

Trial Examiner Batten: I will appreciate it if you will confine it to that.

Q. (By Mr. Langsdale) Well, did you get hold of Mr. Batty and go down to where Fern Sigler was?

A. Yes, sir.

Q. And she was told to go to the office?

A. Yes, sir, she was asked to come to the office.

Q. And you and Mr. Batty went up to the office?

A. Yes, sir.

Q. Now, again, at that time you were the President of the Loyalty League?

A. Yes, sir.

Q. Did you do that as President of the Loyalty League?

A. I did not.

Q. In what capacity did you assume calling Mr. Batty, and go down to see Fern Sigler?

Mr. Lane: That is objected to, if your Honor please, as repetition. That has been gone over thoroughly.

Mr. Langsdale: I don't think it has been gone over as thoroughly as I want to make it.

At page 688:

Trial Examiner Batten: You may answer.

A. In what capacity, please,—I am sorry—

Q. (By Trial Examiner Batten, interrupting) Yes, in what capacity did you call Mr. Batty to go down to see Mrs.—what is her name?

A. Fern Sigler. No, no capacity especially; just as an employee.

Q. (By Mr. Langsdale) It was just a "happen so" was it?

A. Yes, sir.

Q. Just like it was a "happen-so" that you took charge of the meeting on March 18th?"

[fol. 6273] 152. To the actions and rulings of the Trial Examiner in refusing to receive and consider respondent's Exhibit 6, being a newspaper article from the Kansas City Star dated February 26, 1937, for the purpose of showing the actual motive and intent created by the circumstances to which the exhibit had reference in the minds of intervenor's members that led to the organization of the Donnelly Garment Workers' Union, the record with reference thereto reading as follows (Tr. pp. 1907-1911):

"Q. (By Mr. Ingraham) Mrs. Reeves, I hand you Respondent's Exhibit 6, which is a newspaper article appear-

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ing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Wayne Tobin, and ask you if you have read that article.

A. I did.

Mr. Ingraham: The respondent offers in evidence Exhibit 6.

* * * * *

At page 1909:

“Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony; but I would like to examine this witness in regard to whether or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence.

* * * * *

At page 1910:

“Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

• Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

• Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influences that would—

• Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background as the Board had in the NRA Proceeding. They showed it almost entirely by transcript of that testimony. Now, if this means calling a large number of witnesses for that purpose, I don't want to have the background, as I [fol. 6274] have said so many times in this case, become the picture.

• Mr. Ingraham: I don't think it will result in that.

Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expected to use it for."

153. To the action and ruling of the Examiner in excluding respondent's exhibit No. 10, being an article in "Justice", a newspaper published by the International Ladies' Garment Workers' Union, and therefore properly admissible as an admission (Tr. p. 2076-2077):

"Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is.

A. It is "Justice", published by the International Ladies' Garment Workers' Union.

(Thereupon the publication above referred to was marked for identification "Respondent's Exhibit No. 10.")

Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

Trial Examiner Batten: What date is that?

Mr. Langsdale: June 1, 1937.

Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you care to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

Mr. Ingraham: Yes, indeed. This is the official paper of the International.

At page 2077:

Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper:

Mr. Ingraham: Even though it is published by the International?

Trial Examiner Batten: I don't care whom it is published by.

Mr. Ingraham: Wouldn't that be considered as an admission?

[fol. 6275] Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it or the

same basis you offered the other newspaper articles, I will receive it on that basis.

Mr. Ingraham: I offer it, of course, for all purposes.

Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and then you may have your exception."

154. To the action and ruling of the Examiner in allowing a question to stand implying without any evidence in the record to support it that the employees hid the fact of the organization meeting of April 27, 1937, from Mr. Baty (Tr. p. 2294-2295):

"Q. Was there any reason that you knew of why the employees or anyone else should hide it from you that they were going to form a union that night?

A. There was no reason why they would hide it.

Q. But either they did hide it or you just never found it out?

A. I wasn't interested in it in any way.

Mr. Lane: Now, the intervener objects to that for the reason it is argumentative. There is no testimony here that anything was hid from him. He testified that he didn't know it, and the question that it was hid from him is argumentative and not proper cross-examination.

Trial Examiner Batten: Read the question.

(Whereupon, the last question was read by the reporter.)

Trial Examiner Batten: Is that the question?

Mr. Lane: Yes, and the previous question contains an expression that they hid it from him.

Trial Examiner Batten: It may stand.

[fol. 6276] 155. To the action and ruling of the Trial Examiner in sustaining the objections and in refusing to receive and consider the following competent, relevant and material testimony offered by intervener, and similar testimony offered by respondent, of strikes, violence, of the subject of conversations, the effect upon and state of mind

of the employees of the Donnelly Garment Company produced thereby, as an important and moving cause leading them to employ attorneys and to the organization of the Donnelly Garment Workers' Union, and to disprove the allegations of the complaint of domination by respondent, the offers, objections and rulings reading (Tr. pp. 2500-2506):

"Q. (By Mr. Tyler) Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler) What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937, was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys, and later on was one of the impelling reasons for them to organize their own labor union.

Mr. Leary: I will object to the offer on the same grounds.

[Vol. 6277] Trial Examiner Batten: The offer is refused.

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the offer upon the ground that it

includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

Trial Examiner Batten: Well, of course, I assume—I don't know—I wasn't here, but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, in conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

Now, my point on this is this: that if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in any way assisted it, even if you were to prove that all the 1,350 employees in here were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor practice, irrespective of what the employees do, because they can do whatever they please, I mean, within reasonable limits, and I thought I ought to make this statement just in explanation of my ruling.

Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties. I do say that there is no more important fact, and no fact approaching importance the fact of what caused the em-

ployees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

I submit that the employees asserting that they formed the plant [—] of their own free will, will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer [fol. 6278] domination, but was fear and dislike of what the International was doing in its campaign to organize garment workers in Kansas City.

I take it I have an exception to your Honor's ruling without—

Trial Examiner Batten (interrupting): Well, of course, you have an automatic exception.

Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

Trial Examiner Batten: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't, they can have any motive they please.

Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling."

[fol. 6279] 156. To the action and ruling of the Examiner in overruling the objections and motions to strike of re-

spondent and intervener to the Board's offer (Board's Exhibit 30) of NRA testimony (Tr. p. 2552):

"Trial Examiner Batten: Now, on the matter of Board's Exhibit 1-III, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked "Board's Exhibit 30", the objections are overruled and the motion to strike is denied, which means; Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer."

157. To the action of the Examiner in holding, stating and declaring that the testimony of employees on the witness stand as to what their choice of unions is, is no indication of the truth of such statement; because other employees and representatives of the Company were in the room at the time and such declaration and statement shows that the Examiner failed to give such competent, relevant and material testimony any weight in his findings and opinions (Tr. p. 2611):

"Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, "Is this your free choice?" I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point."

Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?

Trial Examiner Batten: I didn't even intimate such a thing.

Mr. Tyler: I understood you to say that their testimony, as to what they wished, would be either of no value or extremely little value.

At page 2612:

[fol. 6280] Trial Examiner Batten: I didn't say any such thing, I don't think.

Mr. Tyler: I misunderstood you, then.

Trial Examiner Batten: The record will state what I said in my remarks.

Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

158. To the action and ruling of the Examiner in excluding testimony of witness Stites, that no threat was made to her by the management in connection with joining the Donnelly Garment Workers' Union and in indicating and declaring that though ninety-five percent of the employees voluntarily joined a union of their own free will absolutely, yet evidence of such fact would not establish it as the bargaining agency of the employees (Tr. pp. 2620-2623):

"Q. Was there any threat made to you by the management or anyone representing the management that if you didn't join this Donnelly Garment Workers' Union or organize a plant union of your own that you might lose your job, or make membership in that union a condition of employment?"

A. No.

Trial Examiner Batten: Did you finish your offer, Mr. Stottle?

Mr. Stottle: Well, if Your Honor is going to let her testify on these matters, I think I need not make it.

Trial Examiner Batten: Well, I am not. I ruled it out, and it is still out. I have no intention of changing my ruling whatsoever.

Mr. Stottle: May I inquire, Mr. Examiner, if we will be permitted to ask other witnesses, employees down there, whether they were dominated, as we have of this witness, by the officers of the Donnelly Garment Company?

Trial Examiner Batten: Let me ask you: Isn't it possible that 1,200 employees might come in here and testify honestly that they were not coerced, and you might have two that would come in and say they were, if the 1,200 [fol. 6281] said No, and the two said Yes, the 1,200 wouldn't prove that the two were wrong, would they? In other words, you might have 1,200 that were not, and you might have two that were? Isn't that true?

Mr. Stottle: It is possible.

Trial Examiner Batten: The 1,200 that were not would not disprove that the two were; isn't that correct?

Mr. Stottle: I think in that case it would be.

Mr. Tyler: I think in that case the Donnelly Garment Workers' Union would still be the overwhelming choice of the majority.

Trial Examiner Batten: I am talking now about the question of coercion. You might have one who was coerced, and you might have every other employee who was not. That would not prove that the one was not coerced, would it?

Mr. Stottle: But, as Mr. Tyler said, it would disprove, in my mind at least, that the Donnelly Garment Company coerced the formation of the union.

Trial Examiner Batten: It is not a question of whether they coerced the formation of it. It is a question of whether they sponsored it or dominated it.

Mr. Tyler: Intervener wishes to suggest in that case there would be no basis laid for a decision that it was dissolving, displacing, or in any way interfering with the rights of this union.

Trial Examiner Batten: Mr. Tyler, let me ask you: Isn't it possible to have 95 percent of the employees in a company voluntarily join a union of their own free will,

absolutely, and yet have it sponsored or assisted by a company?

Mr. Tyler: I think that is conceivable, although it would be so exceedingly improbable it would be very improbable that any such finding could be made in that case that the rights of 95 percent to their own union and their own contract could be dissolved, under the law, because some one or two or more had been coerced.

Trial Examiner Batten: I am not talking about coercion. I say, isn't it possible for a company to form a so-called company union and support it, and yet have 95 percent of the employees join it of their own free will without any coercion on the part of the company.

Mr. Tyler: I think that is theoretically possible, but in a situation where the union has continued to operate for a period of over two years, and where no substantial testimony of any kind is offered by the persons upon whom the burden of proving that devolves, after two years for gathering it, and unlimited funds for gathering it, I submit no possible basis for that kind of a decision has been laid in this case.

Trial Examiner Batten: I am not ruling on this case. I am just asking you, isn't that possible?

[fol. 6282] Mr. Tyler: I think, theoretically, that is possible.

Trial Examiner Batten: And there is one further question I would like to ask in connection with your remark. I don't know whether you meant to imply it or not, but is it your thought that if, an independent union having been formed by a company or assisted by a company—admitting that to be true in the beginning—is it your idea that over a period of time that independent organization can purge itself of the control or the domination which it started out?

My Tyler: I will be glad to answer Your Honor's question. Let me begin by making it clear, I do not for one moment admit there was any fault or domination in the formation of this union—

Trial Examiner Batten (Interrupting): You do not need to answer it at all if you were not implying that in your answer to my former question.

Mr. Tyler: I want to answer it. I don't think there is any evidence in this case of domination of this union, or formation of it, by the company. But, if that had been true, I still believe the law to be—if that had been true and, nevertheless, at the present time the union actually represents the free will choice of the members, what Your Honor calls purging would have taken place and the employees would have the right to continue to operate that union and bargain for it. I believe that to be the law."

[fol. 6283] 159. To the action and ruling of the Trial Examiner in excluding evidence of witness Stites, that she had talked to people who told her that they had met with violence at the Gordon and Gernes plants (Tr. p. 2650-2651):

"Q. (By Mr. Tyler) You talked to people who told you they had met with violence at the Gordon and Gernes plants?

Trial Examiner Batten: Now, I think I have indicated all through this hearing that I am not going into those matters, Mr. Tyler.

Mr. Tyler: Then, intervener joins in the same offer of proof on this matter just offered by the respondent.

Trial Examiner Batten: You mean page 5, Mr. Tyler? That is the page that applies to this matter.

Mr. Tyler: Yes.

Trial Examiner Batten: With reference to the offer on page 5, it will be refused.

Mr. Tyler: And also, repeat the offer of proof which intervener made on the same subject heretofore.

Trial Examiner Batten: The offer is refused. In order to identify that, the respondent's offer of proof has been marked 1-JJJJ, and you are now referring to the fifth page of that?

Mr. Tyler: Yes, sir.

* (Thereupon the offer of proof above referred to was marked "Board's Exhibit No. 1-JJJJ.")

160. To the action and ruling of the Trial Examiner in excluding testimony of Mrs. Davis as to Mrs. Reed's talk at the meeting of March 18th, and further evidence concerning the meeting of March 18th (Tr. pp. 2675-2677):

"Q. Did you attend a meeting of employees on March 18, 1937?

A. I did.

Mr. Stottle: Mr. Examiner, you indicated to me that you didn't want us to continue with that line of testimony.

Trial Examiner Batten: Yes, I think unless some testimony appears later in the proceedings with respect to the March 18th meeting, I see no need of continuing to have [fol. 6284] these people testify about that meeting.

Mr. Stottle: Well, I will ask the question and you can exclude it if you want to, and then that would raise the issue.

Q. (By Mr. Stottle) Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or anyone else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

Mr. Leary: I object to that as cumulative. ✓

Trial Examiner Batten: Sustained.

Q. (By Mr. Stottle) Did you hear Mrs. Reed state that she would never let the International Union into her plant?

Mr. Leary: Same objection.

Trial Examiner Batten: Sustained.

Mr. Stottle: Mr. Examiner, we haven't prepared an offer of proof on that point, but we will prepare an offer of proof as to this witness and other witnesses on that subject.

Trial Examiner Batten: Well, I would suggest, Mr. Tyler, that you prepare it. Then you may offer it and as I arranged in the other instance, you may attach a list of people if you want to, and it will not be necessary to bring all those people here in order to make your offer."

161. To the action and ruling of the Trial Examiner to the effect that the state of mind, apprehension and fear of the employees at the Donnelly plant, caused by the violence committed by the International Ladies' Garment Workers' Union at the Gordon and Gernes plants, was not admissible in evidence as showing one of the motivating causes of forming a union of their own and thereby rebutting the Board's claim that such union was formed by domination or coercion of the employer. (Tr. p. 2712)

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't [fol. 6285] think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness."

162. To the action and ruling of the Trial Examiner in refusing to hear further evidence as to the meeting of April 27, 1937 (Tr. p. 2766):

"Trial Examiner Batten: Mr. Stottle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses."

[fol. 6286] 163. To the action and ruling of the Trial Examiner in overruling intervenor's motion, made at the close of the respondent's case, to sustain the demurrer and dismiss the complaint, being a renewal of the demurrer and motion to dismiss made at the close of the Board's case, the same being overruled in the third paragraph on page 3 of the intermediate report, the renewal reading (Tr. p. 2813):

"Mr. Tyler: If the Examiner please, at the close of the respondent's case, intervenor renews its motion to dismiss and the demurrer to the evidence of the complainant which was offered at the close of complainant's case.

"Trial Examiner Batten: I will reserve a decision, Mr. Tyler, on that motion."

164. To the action and ruling of the Trial Examiner in refusing to receive and consider additional competent, relevant and material testimony by witnesses personally present at the trial and placed on the witness stand by intervenor, and their testimony offered by intervenor with respect to the meeting of March 18, 1937, the said refusal being prejudicial error in view of the fact the Trial Examiner's report showed that he refused to believe the evidence of any witness offered by respondent and intervenor on material points with respect to such meeting. In view of such disbelief by the Trial Examiner it was material and extremely prejudicial error on his part to exclude any witness that respondent or intervenor offered to produce and would have produced but for such ruling to be personally present and testify from the witness stand under the eyes of the Trial Examiner and such error was not cured by offering to receive such testimony in an offer of proof since the Examiner's findings and conclusions show he refused to believe the evidence so proffered in written offers of proof by witnesses whom he did not see and hear. The ruling excepted to in the case of the witness Jack McConaghey appears at Transcript page 2832 and [fol. 6287] reads as follows:

"Q. What happened at that meeting?

Trial Examiner Batten: Now, Mr. Tyler, as far as this March 18 meeting is concerned, there is no need of any

more witnesses testifying to it, unless you have something you want to go into that has not already been covered.

Mr. Tyler: All right. I will cover that by an offer of proof, unless I find some item which I believe has not been touched upon."

165. To the action and ruling of the Trial Examiner in refusing to receive the competent, relevant and material testimony of witness Jack McConaughy proffered by intervener, said witness being personally present and on the witness stand with respect to negotiations culminating in Board's Exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company, said evidence being offered to prove that said contract was the result of genuine bargaining between intervener and respondent, it appearing from the findings, conclusions and recommendations of the Trial Examiner that he refused to believe the evidence of any witness proffered by intervener or respondent with respect to such bargaining. It was material and highly prejudicial error to refuse to receive all testimony that intervener or respondent chose to offer by witnesses personally present under the eyes of the examiner to establish that the said contract was the result of genuine bargaining, thereby disproving the allegations of the complaint in, establishing that intervener was free from the domination of respondent. Such error is not cured by the offer of the Trial Examiner to receive in writing the testimony of witnesses whom he did not allow to be presented and testify on the witness stand. The offer and refusal of the Trial Examiner in the case of witness Jack McConaughy appears in [fol. 6288] the following language at Transcript pp. 2833-2837:

"Q. (By Mr. Tyler) I hand you Board's exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have been two members of this executive committee testify

in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this witness, but Miss Todd and Mr. Atherton, both of whom were at this meeting, testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

Mr. Tyler: Your Honor has stated it is regarded by you as a matter of substantial importance as to whether there were real negotiations. I think the number of witnesses who were present and who recall matters of discussion or argument tends to establish genuine negotiations.

If Your Honor regards that fact as definitely established I will not offer further evidence on that point. If you do not consider it as definitely established, I certainly think I should go into it.

Trial Examiner Batten: You do not expect me to answer that question, do you?

Mr. Tyler: Well—

Trial Examiner Batten: As Trial Examiner of this case, do you expect me to answer that question now?

Mr. Tyler: I have no expectation one way or the other, but I do think that unless Your Honor feels that is definitely established, I should be allowed to present the evidence by the persons who were present at those negotiations.

Trial Examiner Batten: You may present it by an offer of proof.

Mr. Stottle: Mr. Examiner, respondent would say, in that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before [fol. 6289] examining his witness, so that he should be

able to judge that. I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four other witnesses have testified to, I don't think it is necessary.

Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying, for the reason you have indicated, that is an important matter; and, for the reasons Mr. Tyler has stated.

Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

Trial Examiner Batten: I will reserve my decision.

Mr. Tyler: For the present the ruling is, this witness is not allowed to go into the negotiations of May 27, 1937?

Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered.

Q. (By Mr. Tyler) Do you know, Mr. McConaughy, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses?

A. No, sir.

Q. Were you present at any negotiations of June 21 or June 22, 1937?

Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objection to his being excluded from testifying, because it is apparent that no one could determine now whether he has any new matters or not.

Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?

Mr. Stottle: Yes.

Trial Examiner Batten: And you, Mr. Tyler?

Mr. Tyler: I have been absent a day or two.

[fol. 6290] Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane, or someone, representing you every day of this hearing, have you not?

Mr. Tyler: Yes.

Mr. Stottle: But, Mr. Examiner, I have never discussed with Mr. McConaughy one word as to what his negotiations were—

Trial Examiner Batten: I want the record to show that while the witnesses have not been here all of the time, the attorneys have been."

166. To the action and ruling of the Trial Examiner in excluding and refusing to receive and consider the testimony of witness Jack McConaughy in response to the questions hereinafter quoted, the evidence sought to be elicited being competent, relevant and material to show the fact that employees of respondent had reasonable cause to believe that threats were being made against them and the attitude of mind caused thereby, all showing a true, vital and moving cause leading them to consult attorneys as to means of protection and leading and causing ultimately the organization of intervener, tending to disprove allegations of the complaint.

Intervener further excepts to the prejudicial error shown by the Trial Examiner's comments with respect to the testimony excluded to the effect that he did not consider such evidence material, thereby showing that in reaching his findings and conclusions and recommendations he excluded from consideration all testimony offered by respondent and intervener showing that fear and the desire for protection motivated the action of respondent's employees in forming their union, thereby disproving the contention that the union was organized, dominated and sponsored by respondent.

The refusal to hear the testimony excluded is prejudicial error and not cured by an offer to receive testimony in the form of written offers of proof for all reasons stated in [fol. 6291] the previous two exceptions Nos. 164 and 165,

and for the further reason that the comments of the Trial Examiner show his mind closed on the subject and that the reception of further testimony thereon would be of no avail.

The questions, objections, comments of the Trial Examiner, motion to strike and ruling sustaining the same with respect to witness McConaughey, read (Tr. pp. 2838-2841):

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Objection sustained.

Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees' organization by unions and matters of that kind.

I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

[fol. 6292] Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then, I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

Trial Examiner Batten: Yes. And I want to say, as I said to Mr. Ingraham yesterday, the offer of proof which you make will have the same force and effect as though you had presented the witness here and offered it that way.

Mr. Langsdale: What about this answer he just made to the last question? Does that stand, so that it will be the subject of cross-examination?

Trial Examiner Batten: I permitted the questions to be asked up to the point where I could tell what it was all about. I thought Mr. Tyler was going into that subject matter.

Mr. Langsdale: There is one phase of the answer I want to cross-examine on if the answer stands.

Trial Examiner Batten. Of course, I do not expect to have cross-examination on a matter which I have asked for an offer of proof on and stated that I don't consider it to be material. Therefore, I wouldn't consider the witness' answer or the question; material.

Mr. Tyler: If the Examiner has already ruled that it is, in his opinion, incompetent and not admissible, and therefore when I offer this written proof I may expect you to make the same ruling, I would see no ground for cross-examination.

Trial Examiner Batten: I don't believe I said it was incompetent. I don't think I used that term.

Mr. Tyler: No.

Trial Examiner Batten: But any offers of proof the parties offer, Mr. Tyler, when they are offered I intend to make a ruling, as I stated at the beginning of this hearing, that will be served on all of the parties. You cannot assume that I will make the same ruling, because I might change my mind and want to hear all of that testimony.

Mr. Langsdale: I move to strike the answer of the witness to the last question.

Trial Examiner Batten: It may be stricken."

[fol. 6293] 167. To the action of the Trial Examiner in refusing to hear witnesses on behalf of intervener, who would testify on the witness stand under the eyes of the Trial Examiner, on the subject of freedom from domination and the exercise of the witnesses free will and choice in the matter of bargaining representatives and union affiliation on the subject of the meeting of April 27, on the subject of the meeting between March 27 and April 5, it being material and prejudicial error on the part of the Trial Examiner to refuse to hear any and all evidence of witnesses personally present and testifying on said subjects in view of the fact that the Trial Examiner's findings, conclusions and recommendations show that he did not believe the testimony that he did hear and did not believe the testimony offered in written offers of proof of witnesses who were not permitted to testify, and whose testimony might have been sufficient to overcome the belief of the Trial Examiner that the witnesses he did hear testified falsely, and to change his findings and conclusions on the points involved. The consideration of the testimony proffered by intervener and respondent on such subjects, if the same was considered, would not cure the error excepted to since the Trial Examiner refused to believe the evidence of any and all witnesses in behalf of respondent and intervener, whether the same was given on the witness stand or merely offered in the offer of proof of absent and excluded witnesses. The action and rulings, and exceptions thereto, of the Trial Examiner

so excluding and refusing to hear additional competent, relevant and material testimony on such subjects appears in the following portion of the record (Tr. 2857-2859):

“Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness [fol. 6294] for some other purpose—I don’t know as there is any objection to asking that question, although I don’t consider it material to ask a witness that, on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don’t want you to think that by passing the matter up—In other words, if you contemplate calling 1,200 employees and asking them that question, it is an entirely different matter.

On the meeting of April 27, which this witness testified to unless you have witnesses that can add something to what has already been testified to, I don’t want you to offer any further witnesses on it. You may make it in an offer of proof.

As to the March 27 to April 5 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

Mr. Tyler: I understand, then, as to any testimony regarding the April 27 meeting, unless I have some item about it hitherto not touched upon it is your ruling that I need not ask succeeding witnesses those questions, but to make an offer of proof on it?

Trial Examiner Batten: You do not need to present another witness for the purpose of having the witness sworn and ask the question and then have the witness stopped. You may make your offer the same as if the witnesses were here and sworn.

Mr. Tyler: And the same ruling as to the meeting held about the last of March or first of April?

Trial Examiner Batten: As to any offer of proof you make.

Mr. Tyler: And as to the other matter, the free will of the witnesses, of course Your Honor understands my position, that that is as much a fact as his indigestion or whether he has a broken leg, and the best way to get that is to ask him about it.

Trial Examiner Batten: You say it is an objective like a broken leg. I can see a broken leg, but I can't see this witness' mental reaction to that question.

Mr. Tyler: The best way you can is to hear him testify about it. As to that question, shall I put that in an offer of proof?

Trial Examiner Batten: If you intend, as Mr. Ingraham indicated to me that he did, calling a very large number of witnesses to testify to that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material, for the reasons I have previously stated in the record, but I wouldn't have any objection to it."

[fol. 6295] 168. To the action and ruling of the Trial Examiner excluding testimony of threats of violence against employees of the Donnelly Company if they did not join the International as evidence of one cause of the formation of the Donnelly Garment Workers' Union (Tr. p. 2996):

Mr. Patten: Mr. Examiner, the intervener offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that these acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union started its drive to organize the Donnelly plant.

Trial Examiner Batten: And the other witnesses' testimony would be substantially the same as this testimony?

Mr. Patten: And that those threats were made in connection with the International Ladies' Garment Workers'

Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered stricken.

Trial Examiner Batten: The offer is refused."

169. To the action of the Trial Examiner in refusing to receive in evidence the affidavits of 1165 individual employees of the Donnelly Garment Company as to their free choice and preference of the Donnelly Garment Workers' Union and their desire that the National Labor Relations Board hold an election to prove that fact as filed with the National Labor Relations Board on June 7, 1939, as evidence of such free-will choice of the Donnelly Garment Workers Union and in response to the Examiner's ruling that offer of proof might be made of the testimony of individual employees as to their voluntary membership in such union by choice. (Tr. pp. 3041-3042 and 3045):

"Mr. Tyler: It is admitted by attorneys for the Board, the International Ladies' Garment Workers' Union, the respondent, and the intervener, that Arch S. Welch, if present in court, would testify that the 37 photographs which I now hand the stenographer are photographs taken [fol. 6296] by him on the afternoon of Friday, July 9, 1937, of 37 sheets of paper, each containing an affidavit signed by a number of individuals and acknowledged before a notary public, the whole bound together under a cover which was stamped indicating that it had been filed with the National Labor Relations Board on June 7, 1939; and that he made photographs of such sheets of paper bound together under that exhibit stamp; and that these photographs are photographs of each page, and nothing else, and that there are no alterations, subtractions, additions, or changes.

I now offer in evidence the exhibit, which I will ask the stenographer to mark intervener's exhibit No. 18, lettering it from A to whatever that results in.

(Thereupon the photographs above referred to were marked for identification "Intervener's Exhibit No. 20-A to 20KK, inclusive.")

Mr. Tyler: That is an affidavit for an election.

Trial Examiner Batten: You are offering these?

Mr. Tyler: Yes, sir.

Trial Examiner Batten: Any objection?

Mr. Leary: I don't understand the purpose of the offer.

Mr. Tyler: It goes to the choice and free will of these employees of the Donnelly Garment Company and as to whether they were dominated by their employer or not in forming the Donnelly Garment Workers' Union.

Mr. Leary: I submit, Mr. Examiner, that is an improper way of trying to show such testimony. There is no showing that the witnesses are not available.

Trial Examiner Batten: I don't suppose that the witnesses are available, because I did advise the respondent and the intervener I didn't want them to call all of the employees down here and ask them the very questions that are in these exhibits. I presume that is why the witnesses are not here.

At page 3045:

"Trial Examiner Batten: It is refused now as an offer of proof."

170. To the action of the Trial Examiner in refusing to strike out the testimony of Mrs. Gray as to a meeting [fol. 6297] concerning which no evidence was offered as to any connection with the Donnelly Garment Workers' Union or the Donnelly Garment Company or that anything said or done thereat could in any way bind either organization: (Tr. 3062)

"Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or the Donnelly Garment Company, and that nothing said or done at that meeting could in any way bind the respondent or the intervener.

Trial Examiner Batten: The motion is denied."

171. To the ruling and action of the Trial Examiner in refusing to receive competent, relevant and material evidence proffered by intervener as to the reasons why the members of intervener union prefer it as their bargaining representative to any other union they know about, and to give their reasons for such preference, the said testimony so excluded being competent, relevant and material to show that intervener's members do genuinely, of their own free will, prefer intervener union, and that their membership therein is not the result of domination, coercion or influence of the employer. The error in refusing to hear, except and consider said testimony from witnesses testifying in the presence and hearing of the Trial Examiner is not cured by the Trial Examiner's offer to receive a written offer of proof as to what the testimony of absent and unseen witnesses would be upon said subjects for the reason that the findings, conclusions and recommendations of the Trial Examiner indicate that he did not believe or consider relevant and material the testimony on such subjects offered by intervener and respondent, and under such circumstances his refusal to receive and hear further witnesses whose testimony might have changed his mind, [fol. 6298] was prejudicial error against respondent and intervener.

Intervener further excepts to the error of the Trial Examiner indicated in his statement in the material hereinafter quoted that the evidence of witnesses so testifying upon said subject would be immaterial and worthless, and to his error in assuming, as is necessarily implied from his statement hereinafter quoted, that all witnesses proffered upon said subject would commit perjury, and to his error in assuming and prejudging, as shown by said statement, that the witnesses offered by intervener and respondent were in fear of the management of the company, and in assuming that the testimony would be worthless because of such assumed fear.

The rulings referred to excluding such testimony, and the objections of the intervener thereto, appear in the following extract from the record (Tr. 2922-2924):

"Q. Do you personally prefer the Donnelly Garment Workers' Union as your bargaining representative to any other union you know about?

A. Yes, sir, I certainly do.

Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

A. Well, in the first place—

Trial Examiner Batten (Interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

Trial Examiner Batten: You mean by that, you contemplate calling all of the employees to testify to this question?

Mr. Tyler: I contemplate calling a large number.

Trial Examiner Batten: I can tell you now, I do not intend to listen to them.

[fol. 6299] Mr. Tyler: Well, on the present question—

Trial Examiner Batten (Interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say, "Now, is this the union you want?" And so on, and so forth. This is no place to determine what the employees want. An election is the place to determine that. The thing we are trying to determine in this hearing is, did this company have anything to do with forming this union, or sponsoring it? That is the question we are trying to determine.

Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

Trial Examiner Batten: Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by secret election, where they can vote and no one know how they vote. If you have a large number of wit-

nesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

Mr. Tyler: Does that ruling go into effect immediately preceeding this witness?

Trial Examiner Batten: That is right.

Mr. Tyler: You may answer.

A. In the first place, we are able to be independent and manage our own affairs. We think we understand the needs of our plant better than anybody outside can understand them. What affects somebody in New York or Los Angeles doesn't affect us here.

And not only that, it is much more economical.

It gives us the right to bargain with our employer rather than through someone else."

172. To the action and ruling of the Trial Examiner in refusing to receive and consider the testimony of Effie Weigand, a witness produced by the intervener, to the effect that she had heard the testimony of Velma Dowdy in the trial of the injunction suit between respondent, intervener and the International Ladies' Garment Workers' Union before Judge Miller; that a portion of that testimony concerned dues, assessments, fines and costs which the said Velma Dowdy was required to pay as a condition of her membership in the International Ladies' Garment Workers' Union, that the said testimony so heard was one [fol. 6300] of the reasons for said witness Weigand's preference for the Donnelly Garment Workers' Union over any other union and, all of said testimony being competent, relevant and material to show that the respondent's employees were not motivated by fear or favoritism of their employer, but by their own free will choice founded upon the consideration of financial saving. The reception of said evidence by the Trial Examiner did not cure the error in excluding the testimony by this witness and other witnesses, it appearing from the Trial Exam-

er's findings, conclusions and recommendations that the evidence received on said subject was disbelieved or considered insufficient to overcome the Trial Examiner's finding that intervenor was a dominated union and did not represent the free will choice of said employees.

Intervenor further excepts to the error manifested by the Trial Examiner in his statement with respect to the evidence referred to that he did not consider it material to the issues.

The offer of said evidence, the rulings of the Trial Examiner and objections thereto, appear in the following portion of the record. (Tr. 2939-2944):

“Q. Did you ever hear Velma Dowdy testify in that case?

A. Yes, I did.

Q. Did her testimony have any affect upon your choice as to what union you wanted to belong to?

Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

Mr. Tyler: That is what I am leading up to.

Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

[fol. 6301] Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are \$10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the employees have a right to select any union they want to select, and pay any dues they want to pay.

Mr. Tyler: I agree with you. And I think that is the purpose of the Wagner Act, to do that.

Trial Examiner Batten: That is the only prime purpose.

Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing it by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probable or improbable should throw some light on whether they are telling the truth.

If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union—

Trial Examiner Batten (Interrupting): She wouldn't be forced to pay it unless she joined it, would she?

Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

Mr. Tyler: No, I don't think that is possible. If the employees, in their own minds, desired to belong to that union, their reason might be bad, and they might be even deceived by the employer, yet they have a right to that union.

Q. They have a right to the union, but the union hasn't any right to represent the employees if it is formed by the employer, sponsored by the employer, or dominated by the employer.

Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

Mr. Langsdale: The objection I want to make to this testimony—This witness testified she joined the Donnelly Garment Workers' Union in 1937, April 27, I assume. She didn't hear the Dowdy testimony until 1939, so manifestly,

[fol. 6302] it couldn't have had any effect on her joining a union.

Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

Trial Examiner Batten: Nobody is questioning Mrs. Weigand's reason for joining this union.

Mr. Tyler: The Board is questioning the reason for the majority of employees joining this union.

Trial Examiner Batten: No the Labor Board is not questioning her reason for joining this union.

Mr. Tyler: Is it questioning that of any employee whatever?

Trial Examiner Batten: We are not interested in the reason for joining.

Mr. Tyler: But we are interested in the reason the great bulk of them have for joining, are we not?

Trial Examiner Batten: I don't think so.

Mr. Tyler: I have not included this lady's testimony in the offer of proof in the Judge Miller case.

Trial Examiner Batten: We are interested in it to this extent, whether or not she knows whether any executive or officer of this company influenced her to join it, or whether she was told by any such person to join it, or if she knows of any officer of the company who helps operate it or helped form it.

Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answer.

ing the questions as to the effect the testimony of Velma Dowdy had on her?

Trial Examiner Batten: Yes.

Mr. Tyler: I offer to prove, this witness, if permitted to testify, would testify as follows:—I am going to read her testimony in the Judge Miller case.

At page 2944:

Trial Examiner Batten: Mr. Tyler said he is offering it to show the financial difference.

[fol. 6303] Mr. Langsdale: As to the amount of dues.

Trial Examiner Batten: Is that it?

Mr. Tyler: For her reason for the choice of this union.

Trial Examiner Batten: I think, on that basis, Mr. Tyler, it would be better if you make a written offer, and then we will know what you are offering. You undoubtedly have several other witnesses on this same matter you contemplate using?

Mr. Tyler: I will prepare a written offer, and I will include this witness in that offer."

173. To the action and ruling of the Trial Examiner in excluding the evidence of witness Mabel Riggs and all other witnesses proffered by intervener on the subject of her free will and freedom from domination in joining intervener union, said evidence being competent, relevant and material to prove said union to be the free will, said union, to have been organized and maintained without promotion, domination, interference or assistance of the respondent, but as the genuine free will choice of the employees, the exclusion of said evidence being prejudicial error against respondent and intervener and for all of the reasons set forth in intervener's exception No. 167 hereinabove. The portion of the record excluding said evidence and refusing to receive any further evidence on said subject, and the objections of intervener thereto appear in the following portion of the record (Tr. pp. 2964-2965):

"Q. You belong to that association by your own free will and accord?"

A. I do.

Trial Examiner Batten: Now, Mr. Tyler, I don't want to have to, with every witness you put on— That is on the list I asked you to make an offer of proof on. I don't want to have to be in the position of having to say, as you put these witnesses on, "No, that is included in your offer of proof." I like to assume the attorneys know, if I call for an offer of proof, as the respondent's attorneys did—they furnished the offer of proof, and then they didn't try to go any farther with it. That amply protects your interests, it seems to me.

[fol. 6304] At page 2965:

Mr. Tyler: Is your ruling now that the question, "... of your own free will and accord?" shall be included only in the offer of proof?

Trial Examiner Batten: I think it is better if it is, Mr. Tyler."

174. To the denial of due process of law to intervener and respondent involved in the matters excepted to in exceptions Nos. 164, 165, 166, 167, 168, 169 and 171 hereinabove stated, the errors in said exceptions complained of, for all of the reasons stated in said exceptions, having operated to deprive intervener's members of a fair hearing and of their freedom of association and property rights and contract guaranteed by the Fifth Amendment of the Constitution of the United States.

175. To the action and ruling of the Trial Examiner in permitting the Board and the International Ladies' Garment Workers' Union to cross-examine witness Mabel Riggs on the subject to which the Trial Examiner had refused to receive further evidence in behalf of respondent and intervener, the said error, objections and rulings thereon appearing in the following portion of the record, (Tr. 2966-2969):

"Q. Who is the supervisor in that department?"

A. The head of the department is Miss Spilsbury.

Q. Who was the supervisor there in 1937?

A. Miss Spilsbury—Well, I don't know. We always call her the head of the department. I suppose you mean by that, supervisor.

Q. Did you have anyone you called supervisor in April, 1937?

Mr. Tyler: Did I understand the Examiner to rule he would restrict the cross-examination to any new matters brought up?

Trial Examiner Batten: Yes. I said I was requesting that.

[fol. 6305] Mr. Tyler: Then, I object—

Mr. Langsdale: (Interrupting): Here is a witness that has not been available to me yet. This is something I think is important.

Trial Examiner Batten: The thing is this—and it is very certain: I am not going to ask for offers of proof from the respondent and the intervenor, and then permit the Board's or the union's attorney to cross-examine these witnesses on everything they please. We have to have some sort of understanding on this, or I am not going to attempt to make any restrictions at all. I don't think it is fair for me to ask the respondent to make offers of proof on these matters—

Mr. Langsdale (Interrupting): I don't think this matter—

Trial Examiner Batten (Interrupting): Let me finish.—and ask the intervenor to make offers of proof on many matters, and then turn these witnesses over to the Board's or the union's attorney for cross-examination on anything they want to cross-examine them on. I do not consider that fair at all.

Mr. Langsdale: If I have something that in my mind is important and has not been gone into before, you mean I am foreclosed?

Trial Examiner Batten: I didn't say that.

Mr. Leary: Is it your position, Mr. Examiner, that we are foreclosed only on the matters you are requiring offers of proof on?

Trial Examiner Batten: Yes.

At page 2968:

Trial Examiner Batten: As I understand it, the purpose of this is to show the relationship of the person that is in the department who was over this lady, and so forth. I think I understand your purpose.

Now, of course, you have placed me in an exceedingly embarrassing position in this way, I hesitate to say to any attorney who is cross-examining the witness, and can't say, as you well know, that I want you to make an offer of proof on the matter you propose to examine this witness about. I think all of you attorneys know that when it comes to cross-examination I cannot say to any attorney, "Make an offer of proof." I can only say this—I am not going to stop you, Mr. Lingsdale. You may proceed."

[fol. 6306] 176. To the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2, subparagraph (a)) receiving in evidence Board's Exhibit 28, said exhibit being a statement reflecting the facts and figures of respondent's time-workers' payroll records, as to certain employees for the period from April 15, 1937, to July 15, 1937, said exhibit being irrelevant and immaterial to prove any issue in the case, so limited in the period covered as to be prejudicial to intervenor and respondent, opening up collateral issues, the facts disclosed being insufficient and too speculative to prove any charge of the complaint, and not binding upon respondent or intervenor.

Intervenor further excepts to the ruling in said paragraph overruling respondent's objection to Board's Exhibit 28.

177. Intervenor excepts to the action and ruling of the Trial Examiner contained in paragraph 2, subparagraph (g) of Board's Exhibit 1-SSSS, refusing to receive and consider certain proffered evidence in respondent's offer of proof (Board's Ex. 1-JJJJ) because the said ruling is

indefinite and uncertain and it is impossible to tell what portions of said evidence in said offer were received and what portions were barred.

Intervener further excepts to the ruling of the Trial Examiner on paragraph 1 of intervener's motion to clarify the ruling in said paragraph (g) of Exhibit 1-SSSS, which said motion was filed with the Board on September 8, 1939.

178. To the action and ruling of the Trial Examiner contained in paragraph 2 (h) of Board's Exhibit 1-SSSS, refusing to receive and consider certain unspecified evidence in respondent's offer of proof, Board's Exhibit 1-0000; it being impossible to determine from said ruling what portions of said proof were excluded and what portions received.

[fol. 6307] Intervener further excepts to the ruling of the Trial Examiner overruling paragraph 2 of the intervener's motion to clarify rulings filed September 8, 1939, said motion to clarify being directed to paragraph 2 (h) of Board's Exhibit 1-SSSS.

179. To the action and ruling of the Trial Examiner contained in Board's Exhibit 1-SSSS, subparagraph (i) of paragraph 2, refusing to receive and consider portions of evidence contained in intervener's offer of proof (Board's Ex. 1-RRRR), said ruling, because of indefiniteness and uncertainty, making it impossible to determine what portions of said evidence were received and what excluded.

Intervener further excepts to the Trial Examiner's ruling denying paragraph 3 of intervener's motion to clarify rulings with respect to said ruling referred to in the previous paragraph:

180. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2 (j)), excluding unspecified portions of the evidence proffered in respondent's exhibit (NRA-JMC Ex. 3); said ruling making it impossible to determine what portions of evidence, so proffered were received and what portions excluded.

Intervener further excepts to the ruling of the Trial Examiner on paragraph 4 of intervener's motion to clari-

fy, filed September 8, 1939, with respect to the ruling complained of in the preceding paragraph.

181. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2 (k)), excluding unspecified portions of intervener's exhibit (NRA-JMC Ex. 8), it being impossible to determine from said ruling what portions of said proffered testimony were [fol. 6308] accepted and what portions rejected.

Intervener further excepts to the ruling of the Trial Examiner overruling intervener's motion to clarify paragraph 5, filed September 8, 1939, with respect to the ruling complained of in the previous paragraph.

182. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2 (l)), overruling respondent's objection (Board's Ex. 1-UUUU, par. 4); to Board's and Union's NRA-JMC Ex. 17, and accepting portions or all of said testimony, it being impossible to determine from said rulings whether all, or if not all what part of said proffered testimony was received.

Intervener further excepts to the action and ruling of the Trial Examiner overruling paragraph 6 of intervener's motion to clarify, filed September 8, 1939, with respect to the ruling complained of in the previous paragraph.

183. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS par. 2 (m)), it being impossible to determine from said ruling for what purpose the evidence referred to was accepted and for what purpose the same was excluded.

Intervener further excepts to the ruling of the Trial Examiner denying paragraph 7 of intervener's motion to clarify, filed September 8, 1939, with respect to the ruling referred to in the preceding paragraph.

184. Intervener excepts to the action and ruling of the Trial Examiner denying paragraph 8, 9, 10, 11 and 12 of intervener's motion to clarify, filed September 8, 1939.

Wherefore, intervener prays the Board that its excep-
[fol. 6309] tions be sustained, the intermediate report
be disapproved and the complaint dismissed.

Respectfully submitted,

GOSSETT ELLIS, DIETRICH TYLER
FRANK E. TYLER
THOMAS J. PATTEN
LUCIAN LANE

Attorneys for Intervener,
Donnelly Garment Workers' Union

[fol. 6310] (Statement of Exceptions of Respondent to
Trial Examiner's Intermediate Report.

United States of America

Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company, Respondent,
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract,
Intervener

Case No. C-1382. (XVII-C-371)

Comes now the above named respondent and, reserving
the right to file such further objections and exceptions as it
may be lawfully entitled to make or save, objects and ex-
cepts to the Intermediate Report and to the findings, in-
ferences, conclusions and recommendations contained
therein, to the rulings of the Trial Examiner made during
and after the hearing, and to the conduct of the proceed-
ings, as follows:

• • • • •

[fol. 6315]

15.

Respondent excepts to the ruling of the Examiner con-
tained in Paragraph 2 of Board's Exhibit No. 1-YYY, over-

ruling respondent's motion, Exhibit No. 1-SSS, to dismiss the complaint as amended.

16.

Respondent excepts to the ruling of the Examiner contained in Paragraph 3 of Board's Exhibit No. 1-YYY, overruling respondent's motion, Exhibit No. 1-TTT, to strike from the complaint as amended, Paragraph 5, subparagraph C.

17.

Respondent excepts to the ruling of the Examiner contained in Paragraph 5 of Board's Exhibit No. 1-YYY, overruling respondent's motion, Exhibit No. 1-VVV, to make the complaint as amended more definite and certain in each and all of the respects specified in said ruling.

18.

Respondent excepts to the ruling of the Examiner contained in Paragraph 6 of Board's Exhibit No. 1-YYY, ordering respondent to submit a written statement of the evidence it would offer to prove the parts of the Answer set forth in the motion to strike of the International Ladies' Garment Workers' Union, Exhibit No. 1-QQQ.

19.

Respondent excepts to the ruling of the Examiner contained in Paragraph 7 of Board's Exhibit No. 1-YYY, denying and refusing to consider respondent's petition for investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, part C of respondent's Answer, Exhibit No. 1-JJJ.

[Pol. 6317]

20.

Respondent excepts to the ruling and action of the Trial Examiner (Transcript of Record, p. 130) denying respondent's motion (Exhibit 1-PPP) to dismiss the amended complaint and in denying the intervener's motion to dismiss (Exhibit 1-LLL).

21.

Respondent excepts to the ruling and action of the Trial Examiner (Transcript of Record, p. 214) in denying re-

spondent's motion (Exhibit 1-AAAA) to strike portions of Paragraph 11 of the amended complaint, which was denied as to all parts except subparagraphs (o) and (p).

22.

Respondent excepts to the ruling and action of the Trial Examiner (Transcript of Record, pp. 130, 131, 194) denying intervenor's applications for an election and continuance.

23.

Respondent excepts to the ruling and action of the Trial Examiner, Transcript of Record, p. 194) in refusing to consider the petitions for investigation and certification (Exhibits 1-NNN and 1-OOO) filed by intervenor herein.

24.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (a) of Board's Exhibit 1-SSSS receiving in evidence Board's Exhibit 28, for [fol. 6318] the reason that said exhibit and evidence is irrelevant and immaterial to any issue herein and does not tend to prove any charge in the complaint; for the further reason that said exhibit is incomplete and covers only a period of three months' time and does not include earnings of piece workers, bundle boys, etc.

25.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (d) of Board's Exhibit 1-SSSS refusing respondent's offer of proof (Exhibit 1-XXXX).

26.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (e) of Board's Exhibit 1-SSSS sustaining motion (Exhibit 1-QQQ) of the International Ladies' Garment Workers' Union to strike certain parts of respondent's answer.

27.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (f) of Board's Exhibit

1-SSSS refusing the respondent's offer of proof (Exhibit 1-NNNN) as to Part B of the Answer.

28.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (g) of Board's Exhibit 1-SSSS refusing respondent's offer of proof (Exhibit 1-JJJJ).

[fol. 6319]

29.

Respondent excepts to the ruling and action of the Trial Examiner set forth in Paragraph 2 (h) of Board's Exhibit 1-SSSS refusing respondent's offer of proof (Exhibit 1-0000).

30.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (i) of Board's Exhibit 1-SSSS refusing intervenor's offer of proof (Exhibit 1-RRRR).

31.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (f) of Board's Exhibit 1-SSSS, denying Respondent's request in Part A of its Answer for dismissal of the Complaint.

32.

Respondent excepts to the failure and refusal of the Trial Examiner to accept or consider Respondent's Offer of Proof (Board's Exhibit 1-QQQQ) as to paragraph 2, Section A, of Respondent's Answer.

33.

Respondent excepts to the failure and refusal of the Trial Examiner to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part A of Respondent's Answer herein.

34.

Respondent excepts to the failure and refusal of the Trial [fol. 6320] Examiner to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part B of respondent's Answer herein.

35.

Respondent excepts to the statement of the Trial Examiner in paragraph 2 (f) of Board's Exhibit 1-SSSS that the respondent stated in the record that no offer of proof would be made on Part A of the Answer, for the reason that said statement overlooks respondent's offer of proof (Board's Exhibit 1-QQQQ) as to part A of its Answer.

36.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (j) of Board's Exhibit 1-SSSS in so far as the effect or consideration of the evidence contained in respondent's NRA-JMC Exhibit 3 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Respondent further excepts to said part of said ruling because the same is so vague and uncertain as not to apprise respondent as to what parts of the evidence in said NRA-JMC Exhibit 3 the Trial Examiner by said ruling considers or excludes or refuses to consider. Respondent is thereby denied and has been denied a fair and impartial [fol. 6321] hearing herein and due process of law, as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of Elizabeth Reeves contained in said NRA-JMC Exhibit 3 upon any of the issues or "subjects" referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner).

(c) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of witnesses Bachofer, Reeves, Keyes, Stites, Rosenfield, Gordon, Ruden, Dowdy, Kilby, Sprofera, Ball, Jeters, Rickett, Cauthen, Smith, Redish, Shartzter,

Warren, Ingraham, Hull, Perlstein, Fry, Dubinsky, Tobin, Mrs. Reed, Allison, Atchison, Wales, Owen, Rutherford, Reidel, Lutz, Patton, Neimoyer, Perkins, Richards, Stroup, White, or any of them, contained in said NRA-JMC Exhibit 3 upon any of the issues or "subjects" referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner.)

[fol. 6322]

37.

Respondent excepts to the ruling and action of the Trial Examiner set forth in Paragraph 2 (k) of Board's Exhibit 1-SSSS in so far as the effect or consideration of the evidence contained in NRA-JMC Exhibit 8 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Respondent further excepts to said part of said ruling because the same is so vague and uncertain as not to apprise respondent as to what parts of the evidence in said NRA-JMC Exhibit 8 the Trial Examiner by said ruling considers or excludes or refuses to consider. Respondent is thereby denied and has been denied a fair and impartial hearing herein and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of any of the witnesses contained in said NRA-JMC Exhibit 8 upon any of the issues or "subjects" referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner.)

[fol. 6323]

38.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (1) of Board's Exhibit 1-SSSS overruling respondent's objections (Board's Ex-

hibit 1-UUUU, part 4) to Board's and Union's NRA-JMC Exhibit 17.

39.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (m) of Board's Exhibit 1-SSSS in so far as the effect or consideration of the evidence contained in respondent's NRA-JMC Exhibit 17 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Respondent further excepts to said quoted part of said ruling because the same is so vague and uncertain as not to apprise respondent as to what parts of the evidence in said NRA-JMC Exhibit 17 the Trial Examiner by said ruling considers or excludes or refuses to consider. Respondent is thereby denied and has been denied a fair and impartial hearing herein and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of any of the witnesses contained in said NRA-JMC Exhibit 17 upon any of the issues or "subjects" [fol. 6324] referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner.)

Respondent further excepts to said rulings of the Trial Examiner contained in paragraphs 2 (j), 2 (k), and 2 (m) of Board's Exhibit 1-SSSS, because the Trial Examiner's conclusions and findings in the Intermediate Report show that he failed and refused to consider material evidence favorable to respondent contained in said NRA-JMC Exhibits.

Respondent makes this exception on the ground that all of the NRA, Loyalty League, or other testimony concern-

ing conditions or events existing or occurring prior to the effective date of the National Labor Relations Act is irrelevant and immaterial and does not tend to prove that respondent, after the enactment of the National Labor Relations Act, did any act prohibited by the Act and that therefore none of such evidence should have been received or considered, but that (without waiving said objection) if such evidence offered by the Board or the International Ladies' Garment Workers' Union is received or considered, then such evidence offered by respondent should be received and considered.

40.

Respondent excepts to the action and ruling of the Trial Examiner on October 2, 1939, denying motion of respondent [fol. 6325] ent herein, entitled "Motion to Clarify Rulings of Trial Examiner" filed with the Trial Examiner on or about September 6, 1939; and severally excepts to the denial of each and every the several motions and requests for clarification set forth in said Motion.

Respondent also excepts to the ruling and action of the Trial Examiner denying a like Motion for Clarification filed by Intervener herein.

41.

Respondent excepts to the ruling and action of the Trial Examiner, on October 2, 1939, denying Motion of Respondent herein, filed with the Trial Examiner on or about September 12, 1939, for leave to file herein and make a part of the record, a certain petition for investigation and certification of representatives (which respondent had attempted to file with the National Labor Relations Board), and copy of the letter of the Acting Regional Director for the Seventeenth Region to Donnelly Garment Company, dated September 8, 1939, refusing to file and docket said petition.

.

[fol. 6426]

168.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 3 of the Amended Complaint (Board's Exhibit 1-

KKKK) because none of the allegations therein contained is proved or supported by the evidence.

169.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of the following allegation in Paragraph 4 of the Amended Complaint (Board's Exhibit 1-KKKK): "... and its predecessor, Donnelly Loyalty League", is a "labor organization", because said allegation is not proved or supported by the evidence and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

[fol. 6427]

170.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

171.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 (a) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

172.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 (b) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

173.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal [fol. 6428] of Paragraph 5 (c) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and be-

cause said allegations relate to or are based upon matters purporting to have existed or occurred prior to the effective date of the National Labor Relations Act, which were then not unlawful and from which no inference of unlawful conduct by respondent after the enactment of said Act may be drawn.

174.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 (d) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because closed shop agreements are specifically authorized by Section 8 (3) of the National Labor Relations Act.

175.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 6 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the [fol: 6429] National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

176.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 7 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

177.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of

Paragraph 8 of the Amended Complaint (Board's Exhibit 1-KKKK).

178.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 9 of the Amended Complaint (Board's Exhibit 1-KKKK).

179.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 10 of the Amended Complaint (Board's Exhibit 1-KKKK).

[fol. 6430]

180.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

181.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (a) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

182.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (b) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

183.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (c) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence, and

said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

184.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (e) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

185.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (f) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

186.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (l) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegations therein contained are not proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

187.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (m) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein [fol. 6432] contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

188.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (q) of the Amended Complaint (Board's

Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

189.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (r) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

190.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of the last paragraph in Paragraph 11 of the Amended Complaint (Board's Exhibit 1-KKKK) because said allegations are vague and indefinite and constitute the conclusion of the pleader and are in no way supported by the evidence.

[fol. 6433]

191.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 12 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

192.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 13 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

193.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of

Paragraph 14 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

[fol. 6434]

194.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 15 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

195.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 16 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

196.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 17 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

197.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 130 of the transcript of the record denying respondent's and intervener's Motions to Dismiss the Complaint.

198.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Pages 130, 131 of the transcript of the record denying the application for an election made by the intervener, Donnelly Garment Workers' Union, and refusing to entertain in this proceeding a petition for an election.

199.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 194 of the transcript of the record denying the motion of the intervener, Donnelly Garment Workers' Union, for a continuance of this proceeding for the purpose of the Board's holding an election to determine the representatives of the majority of the employees of respondent and until the results of such election are known.

200.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 214 of the transcript of the [fol. 6436] record denying, except as to paragraphs (o) and (p), respondent's Motion (Exhibit 1-ZZZ) to Strike Portions of the Complaint as set forth in said Motion.

201.

Respondent excepts to the ruling and comment of the Trial Examiner set forth on Page 228 of the transcript of the record that he was "not bound by the rules of evidence and why be bound by any technical proceedings of the Court", and to his comment on Page 229, to wit, "We will proceed on the basis I have just explained".

202.

Respondent excepts to the ruling and action of the Trial Examiner overruling objection to testimony regarding the Donnelly Loyalty League and admitting testimony concerning same, which ruling and action is set forth in the

following excerpt from the transcript of the record, Pages 272, 273:

"Q. Are you still a member of the Loyalty League?

"A. Yes, sir.

"Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers Union.

"Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection."

[fol. 6437]

203.

4. Respondent excepts to the ruling and action of the Trial Examiner admitting in evidence Board's Exhibit 2 over the objection of respondent and intervener, which ruling and action are set forth in the transcript of the record at pages 305, 306, as follows:

"Mr. Leary: Board offers its Exhibit 2.

"Mr. Ingraham: I object for the reason that there has been no showing that the Donnelly Company Athletic Club—what is the name of this? The N.D.A.A. represents the company in any shape, way, shape or form, and nothing that it publishes in any way is binding upon the respondent."

"Trial Examiner Batten: Well, you are offering it in its entirety?

"Mr. Leary: I am, Mr. Examiner; yes, sir.

"Mr. Tyler: The intervener desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

"Trial Examiner Batten: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it

subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as 'Board's Exhibit No. 2' was received in evidence.)"

204.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 360 of the transcript of the record as follows:

[fol. 6438] Q. Your memory is a complete blank on this matter of a stenographer and how she was obtained and who she was and so forth?

Mr. Tyler: Well, I object to that as repetition and argument with his witness. She said she doesn't remember. I object to the method of cross-examination and browbeating of this witness.

"Trial Examiner Batten: Now, Mr. Tyler, there is no browbeating or even indication of it thus far, not even a semblance of it thus far. I think Mr. Leary has been very gentlemanly, and that is what I expect all counsel to be in this hearing. Now, I am here for some purposes and if it got to the point in this hearing where anybody attempts to browbeat a witness, I will see that they are amply protected.

"Mr. Tyler: I submit that repeating the question with emphasis after she once answered it amounts to improper cross-examination, and it is not proper at this time.

"Trial Examiner Batten: You may answer".

205.

Respondent excepts to the ruling and action of the Trial Examiner striking of the answer of witness Rose Todd as set forth in the transcript of the record at Pages 428, 429, 430, as follows:

"Q. Well, did you know on April 22d that Fern Sigler was in the union?

"A. Mr. Leary, I am not clear on the date of that.

"Q. Well, that would be the day before this meeting.

"A. In the evening; possibly that night.

"Q. April 22d?

"A. It was either the 22d or the 23d. I don't know which it was. Whatever date that you say will have to stand, because I couldn't remember the date. It was the first time that I knew anything about Sylvia Hull. I didn't know anything about Fern Sigler until this morning. So, what,—in that conversation there, I don't think I am referring to Fern at the time. It was just a general discussion of different people, about their feeling toward people that belonged to the International Union. As you [fol. 6439] will remember, that feeling was created by the disturbance that was going on around town, and particularly up at 26th and Grand.

"Mr. Leary: I move, Mr. Examiner, that be stricken as not responsive.

"Mr. Leary: Let the whole answer be stricken.

"Trial Examiner Batten: The entire answer may be stricken,*****"

206.

Respondent excepts to the ruling and action of the Trial Examiner overruling objection of respondent and intervenor to the cross-examination by Mr. Langsdale, attorney for the International Ladies' Garment Workers' Union, of witnesses in this proceeding, which objections and ruling are set forth at pages 514, 515 of the transcript of the record as follows:

"Mr. Lane: Mr. Examiner, prior to Mr. Langsdale's cross-examination, I renew my objection as to his right to cross-examine this witness on the ground that he is taking the position adversary to that of the Board; which he, being counsel for the International Ladies' Garment Workers' Union, which is the claimant in this case.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: The objections are overruled.

"Mr. Langsdale: Shall I proceed?

"Trial Examiner Batten: Yes, sir."

Respondent excepts the rulings, action and comments of the trial examiner concerning the witness Rose Todd and her testimony appearing on Pages 557 to 559 of the transcript of the record for the reason that same show the bias and prejudice of the Trial Examiner against the [fol. 6440] respondent, and show his failure and refusal to consider testimony favorable to respondent and show that respondent was denied a fair and impartial hearing herein by the Trial Examiner and for the reason that the Trial Examiner was thereby attempting to intimidate and confuse the witness and inject into the record a highly prejudicial conclusion and statement concerning the said witness for the purpose of misleading the Labor Board and any Court that might review the evidence, and for the reason that said bias and prejudice of the Trial Examiner were and are highly prejudicial to respondent in that same were carried forward into, and permeate, the findings of fact, conclusions and recommendations of the Trial Examiner which comments and action of the Trial Examiner are set forth in the following excerpts from the record (pp. 557, 558, 559), to wit:

"Q. Did you discuss any one of the points that you recall?

"A. I surely did. I think I probably discussed—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something, too. No doubt they did.

"Q. Now, Miss Todd, 'may'—of course, 'may' anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

"A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

"Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

[fol. 6441] "Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says

she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

"Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?

"Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

"Mr. Ingraham: I except to Your Honor's remarks.

"Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

"Mr. Tyler: The intervenor wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were principalized (crystallized) in written form, which is the summary of the witness' memory of what was done; that there is no provision or presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

If the court will recall, she has testified that these demands were submitted as demands of the union.

"Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

"Mr. Ingraham: Respondent excepts to the remark.

"Mr. Tyler: The intervenor excepts.

"Mr. Ingraham: As highly prejudicial.

"Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham.

[fol. 6442] "Mr. Ingraham: I think it is incorrect.

"Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago.

208.

Respondent excepts to the ruling and action of the Trial Examiner appearing on Pages 640, 641 of the transcript of the record, overruling respondent's objections to the witness being permitted to interpret a written contract and permitting the witness to give her interpretation of said contract, which said objections and rulings are disclosed by the following excerpts from the record, to wit:

"Q. Let us take in this same person with the \$18 guarantee, who worked during certain weeks only 20 hours, but who during those 20 hours of work earned only \$9, or rather \$8.50, on a piecework basis. What would be the person's pay check for that week.

A. I am not very good at mathematics.

"Mr. Stottle: The respondent doesn't object to the witness telling what she can about that, but we do object to a witness trying to interpret a written contract, which is here in evidence, and ***** allow those interpretations of a written contract to be deemed as binding on the respondent. We don't believe that is proper.

"Trial Examiner Batten: Well, don't you think, Mr. Stottle, a person who is a party to the contract has a right to give their idea of how it should be interpreted; whether it is binding, I am not passing on that, but surely the person who signed it ought to be in a position to say what they think about it.

"Mr. Leary: I will withdraw the question, if Mr. Stottle will point that portion out in the contract to me.

"Mr. Stottle: I say, there is a written contract that provides, that all of that is provided about the guarantee:

[fol. 6443] "Mr. Leary: Will you point that particular part out to me now?

Trial Examiner Batten: The witness may answer the question: I have said she is qualified as a party to this contract to give her idea of what it is.

209.

Respondent excepts to the ruling and action of the Trial Examiner permitting the International Ladies' Garment Workers' Union to cross-examine the Board's witnesses and other witnesses over the objection of the respondent and the intervener appearing on Page 650 through Page 654 of the transcript of the record, which objections and rulings are disclosed by the following excerpt from the transcript, to wit:-

"Mr. Lane: Now, if the Examiner please, before Mr. Langsdale begins any examination of this witness, I desire to object to counsel for the International Ladies' Garment Workers' Union being permitted to interrogate this witness or to cross examine this witness, for the reason that counsel for that organization, the claimant in this case, having during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's counsel of this witness, to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination at this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination, and—

[fol. 6444] "Trial Examiner Batten (interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

"Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in courts of law, and which should obtain in administrative tribunals as to be a negation of the rules of fair play, as to deprive the intervener in this case of due process.

"Mr. Stottle: Respondent makes the same objection.

"Trial Examiner Batten: I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed."

210.

Respondent excepts to the ruling and action of the Trial Examiner in permitting Mr. Langsdale, as counsel for the International Union, to read into the record and interrogate the witness concerning a purported affidavit of Mrs. Reed given in another proceeding, over the objection of the Intervener and the Respondent as disclosed by the transcript of the record, pages 674 through 680, and from the following excerpts therefrom, to wit:

"Q. Let me ask you if you have read or heard read the affidavit filed in that suit, signed by Nell Quinlan Reed, dated November 5, 1937, in which she stated, 'In the first place, a group of employees—

"Mr. Lane (Interrupting): Just a moment. I am objecting, of course, to his reading the affidavit made in that trial as not being proper cross-examination of this witness and an improper way of trying to get that into this record.

"Q. (Mr. Langsdale) Have you heard this part of Mrs. Reed's affidavit read:—

"Mr. Lane (Interrupting): Just a minute. The witness' testimony, as I understand it, is she has not read or heard read any portion of that affidavit.

[fol. 6445] "Trial Examiner Batten: Mr. Lane, there is no objection to asking her if she has? You don't mean this has anything to do with the evidence, because an attorney reads it in here? I suppose if you got up and read this whole case in here, line by line, then when you got through you asked the witness if she had ever heard it read before —It doesn't mean anything when the attorney reads it.

"Mr. Lane: I object to it.

"Trial Examiner Batten: You may proceed.

"Q. (Mr. Langsdale) Let me ask you if you heard read in that lawsuit this part of Mrs. Reed's affidavit: "In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet and discuss ways and means to protect themselves against any assaults or acts of violence on the part of the International Ladies' Garment Workers' Union."

"A. I did not know that.

"Mr. Ingraham: Well, if your Honor please, Mr. Langsdale asked this witness if she had read or heard read, rather, Mrs. Reed's affidavit, and then he proceeded to read from that affidavit, and he is still referring to some record and I think the inference is that he is still reading from an affidavit of Mrs. Reed, which would be confusing to the witness, when, in fact, he is not reading from Mrs. Reed's affidavit.

211.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's objection on Page 696 (697) of the transcript of the record to the examination by Mr. Langsdale of the witness upon matters gone into in-chief by the Board's counsel and as to why the witness said certain things in the Exhibit referred to in the objection and to the Examiner's permitting the International Union to proceed as a separate and independent party in this proceeding, which rulings and action appear

in the following excerpts from the transcript of the record, Pages 696 (697), 698, 700, 703:

[fol. 6446] "Mr. Stottle: Mr. Examiner, respondent objects to this whole line of testimony on this exhibit for the reason that Mr. Leary went through the same exhibit and asked the same questions, and it is repetition, for one thing; and, for another thing, the transcript speaks for itself. As to why she said a certain thing or didn't say it is immaterial to any issue in the case. I believe the examiner in his own statements made some such remarks as that when this was gone into before.

"Trial Examiner Batten: I presume you are referring to this entire line of questioning, are you not?

"Mr. Stottle: As to this exhibit, yes.

"Trial Examiner Batten: I am going to sustain the objection unless you take the position that you are an entirely independent and separate party to this action, Mr. Langsdale. If you are, then I will permit you to proceed as an entirely separate and independent party.

"Mr. Langsdale: I have taken that position, and I take it now.

"Mr. Stottle: Mr. Examiner, we object to his being accorded the right to take that position.

"Trial Examiner Batten: I am not according it. The rules so provide. The International Ladies' Garment Workers' Union is mentioned in this complaint. And if that is Mr. Langsdale's position, he may proceed as a separate and independent party and assume the responsibility for the conduct of his case independent of the Board's attorneys.

"Mr. Ingraham: If the Examiner please, if Mr. Langsdale is representing a separate party he should also apprise all other parties of the position he takes, and all other parties should have pleadings setting forth his position.

"Trial Examiner Batten: I am not going to complicate this question I have raised by the matter of pleadings. I will permit you to raise it when I get my point settled.

"Mr. Lane: We do not agree with your Honor's position. Our position is, if the Examiner please, this witness is produced by the Board, and that the I.L.G.W.U., by rule 5, is made a party to the proceeding, the complaint being filed in the name of the Board, and that in attempting to cross-examine this witness Mr. Langsdale is in effect attempting to cross-examine his own witness.

"There is not anything in rule 25 which gives the Board or Mr. Langsdale the right to cross-examine his own witness."

[fol. 6447]

212.

Respondent excepts to the rulings and action of the Trial Examiner in permitting ~~counsel for the~~ International Union to examine and cross-examine the witness, Rose Todd, concerning matters already gone into in chief by the Board's Counsel which repetition and examination appears in the transcript beginning at Page 730 and extending through Page 742, over the repeated objections of the respondent and the intervener appearing on said pages..

213.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record, Pages 743, 744, to wit:

"Q. Now, despite the fact that you said on the 23d day of April that 'we're going to run an open shop', you presided at a meeting four days later where the Donnelly Garment Workers' Union was formed?

"Mr. Lane: Mr. Examiner, I object to that for the reason the question omits certain important additions made in the statement as shown by the transcript. The full statement attributed to Miss Todd being 'We're going to run an open shop as long as the majority feels that way. The majority is going to rule, as always.'

"Mr. Langsdale: Well, now I object to his incorporating anything in my question. I have a right to take such parts of the statement as I desire to examine her about and not use her self-serving—

"Trial Examiner Batten (interrupting): Read the question, please.

"(Whereupon, the question was read by the reporter).

"Trial Examiner Batten: You may answer."

[fol. 6448]

214.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objection of respondent to the question as set forth in the following excerpt from the transcript of the record, Page 750, to wit:

"Q. If you should have some person who had had years of experience in negotiating contracts with garment companies similar to yours who should go to work for the Donnelly Garment Company and you should want them to represent you, even though they had only been there a week—

"Mr. Stottle (Interrupting): Respondent objects to the question as being wholly argumentative and speculative as to what might happen in the future and what might happen.

"Trial Examiner Batten: If you will permit him to finish the question, Mr. Stottle.

"Mr. Stottle: I did wait a while.

"Q. (By Mr. Langsdale)—would you think you should be limited in your right to employ that person or any one else to represent you?

"Mr. Stottle: Now, Mr. Examiner, we renew the objection.

"Trial Examiner Batten: You may answer.

215.

Respondent excepts to the ruling and action of the Trial Examiner in permitting counsel for the International Union to examine the witness concerning her interpretation of a written contract over the objection of the respondent and the intervenor and requiring the witness to testify to said matters, as shown by excerpts from the transcript of the record, Pages 754, 759, 760, 761, 762:

[fol. 6448-a] "Mr. Stottle: Mr. Examiner, the contract speaks for itself, whatever it may say, and we object to asking the witness to interpret something that is perfectly plain in whatever it says. If it wasn't plain I don't believe this witness would have the right to interpret a written contract.

"Q. (By Mr. Langsdale) Miss Todd, paragraph 11 of the working agreement entered into on May 27, 1937,

"The employer agrees that the individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time on the affairs of the union and to continue her employment with the company at the proportionate rate of pay hitherto received by the company in the time thereafter given to the company."

"Will you tell me why you as a member of this contracting committee submitted to paragraph 11, placing a limitation upon the activities of the representatives of that union as paragraph 11 does limit them?"

"Trial Examiner Batten: You mean as it does or if it does?"

"Mr. Langsdale: As it does."

"Mr. Patten: Mr. Examiner, intervener objects to the question, adopting for that purpose the objection heretofore made by Mr. Stottle, and sustained, and the objection made by Mr. Lane; and further—

"Mr. Patten: . . . We further object because the question assumes, as other questions have assumed, that this committee submitted to it. There is no evidence whatever that they submitted to anything. For that reason we ask that the question be excluded."

"Trial Examiner Batten: Objection sustained."

"Mr. Langsdale: The union makes an offer to prove that this witness, if permitted to answer the question, would testify she intentionally desired to limit the activi-

ties of the representatives of the union for the purpose of crippling that representation and, in addition to that, the further motive was developed by propaganda indulged in by the management of this company against union representation and the necessity therefor.

[fol. 6448-b] "Trial Examiner Batten: Of course, if this witness will answer as you have just said, I will permit you to ask the question, because you have said if she is permitted to testify she would testify in a certain way. On the basis of that you certainly can proceed.

"Mr. Patten: If the Examiner please, I suggest that Mr. Langsdale agree to be bound by the witness' answer. Otherwise his offer is improper.

"Q. (By Mr. Langsdale) Now, then, will you say why you did submit to the limitation of paragraph 11 upon the activities of the representatives of the Donnelly Garment Workers' Union?

"A. There are no limitations on the committee of the Donnelly Garment Workers' Union.

They all take an active interest. They all have time at noon or after work, the same as I have, and you will find continuously through these minutes where they have done a lot of work and taken an active interest in it. I couldn't dominate those people if I wanted to.

"Mr. Langsdale: I move that the answer be stricken out as not responsive.

The question was, why did she submit to paragraph 11, which puts a limitation upon the activities of the members?

"Mr. Stottle: Mr. Examiner, respondent objects in that the offer of proof is not being made, and asks that it be stricken.

"Trial Examiner Batten: It may stand."

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's objection and permitting the witness Rose Todd to testify to her interpretation of written by-laws and contract as disclosed by the following excerpts from the transcript of the record, Pages 774, 775, to-wit:

"Q. But under your by-laws, in your contract, no one can continue to work for the Donnelly Garment Company who joins the International Ladies' Garment Workers' Union; is that correct?

"Mr. Stottle: Just a moment. Mr. Examiner, we object to this question for the reason, as we have several times, this just involves an interpretation of the by-laws and contract. If this witness gave an answer, your Honor wouldn't feel bound by it, if you thought the contract meant something else, and what is the materiality of having her answer something that wouldn't bind you and bind Mr. Langsdale and not bind the respondent. It possibly might be binding on the intervener, I don't know that it would be, with a written contract made by the intervener.

"Mr. Langsdale: The question is provoked by the long answer of this witness that anyone could join any organization anyone wanted to with the Donnelly Garment Company, and of course, this is very plainly written that cannot be done.

"Trial Examiner Batten: I think it isn't so much a question of interpretation of the contract. It is a question of this witness on the basis of her volunteering a statement that anybody can join anything they please.

"Q. (By Trial Examiner Batten): Now, the question, Miss Todd, is this, or at least, my question: How can a person join any union they please under the restrictions in these contracts?"

Respondent excepts to the ruling and action of the Trial Examiner as disclosed by the following excerpts from the transcript of the record, Pages 784, 785, 786, 787, to-wit:

[fol. 6450] "Q. But who passed upon who belonged to that classification, group 1 operators, performing their work efficiently?

"A. Who passed on this, at this time?

"Q. Yes, under this contract.

"Mr. Stottle: If the Examiner please, respondent objects to the question as to who passed upon it. There is nothing to indicate the question has ever arisen as to whether the operator was efficient or otherwise.

"Trial Examiner Batten: Of course Miss Todd is reading this. Apparently someone has to pass on it if the question arises. I think the witness should testify who. The statement is there, as Mr. Langsdale has read it—I haven't read it.

It seems to me that this witness should state that. That apparently is the sum and substance of the paragraph.

"Mr. Stottle: How could the witness state who passed on something if it never has been passed upon?

"Q. (By Trial Examiner Batten) Miss Todd, in those classifications, where it states "who efficiently performs . . ." who would determine that efficient performance?

"Mr. Stottle: Mr. Examiner, I think we should make our objection to your own question, also—

"Trial Examiner Batten (Interrupting): You are perfectly free to.

"Mr. Stottle: —for the reason that you are asking the witness to interpret a provision of the contract which does not say who is to, and you are asking her to say who is to do something that is not provided for.

"Trial Examiner Batten: That is why. I cannot possibly determine it myself by reading the contract, it does not say who it is.

"Mr. Stottle: There are lots of things that contract has not mentioned; that is one of them. If it isn't stated in the contract it is not a part of the contract.

"Trial Examiner Batten: As far as the Examiner is concerned, I would like to know what this witness, who was a

party to the contract, representing this organization, says as to who performs efficiently.

"Q. (By Trial Examiner Batten) Who determines that?

[fol. 6451] "Trial Examiner Batton: Your objection is overruled. I didn't say so, but by the following question I asked I supposed it was understood.

"Mr. Stottle: Mr. Examiner, may respondent have a continuing objection to this kind of questioning as asks for an interpretation of provisions of the contract?

"Trial Examiner Batten: I prefer that you not have it, because I don't know that I am going to make the same ruling on all of the questions that may be asked. I would prefer that you make your objections, Mr. Stottle, as the questions are asked; that is, on this matter."

218.

Respondent excepts to the ruling and action of the Trial Examiner in admitting evidence not subject to further identification of ILGWU Exhibit 2 over the objection of the respondent, as disclosed by the excerpts from the transcript of the record, Pages 821, 822, to wit:

"Mr. Stottle: Mr. Examiner, respondent objects to the introduction of this exhibit at this time because there hasn't been any identification that would show that it has any materiality on the case.

"Mr. Langsdale: Well, now, there are two objections in one. You object to it once because it isn't identified and another because it isn't material.

"Mr. Stottle: Yes. I am making both of them, neither identified properly or material if it were identified properly.

"Mr. Langsdale: Well, I think it has been sufficiently identified and certainly it is material.

"Trial Examiner Batten: Well, I don't see; I will receive it subject to further identification. I don't think this witness' statement, Mr. Langsdale, is sufficient to receive it without qualification. * * *

"I said I would receive it subject to further identification":

[fol: 6452]

219.

Respondent excepts to the ruling and action of the Trial Examiner in excluding competent and material evidence offered by respondent through the witness Rose Todd concerning the threats of the International Ladies' Garment Workers' Union against the respondent's employees and the violence of the strikes and other activities of the I.L.G.W.U. at other garment factories for the purpose of showing the effect of said activities upon the respondent's employees as being a motivating cause for the formation of the Donnelly Garment Workers' Union, and as disproving the allegations in the amended complaint that respondent dominated said Donnelly Garment Workers' Union or caused its formation.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in the following excerpts from the transcript of the record, Page 839, to wit:

"Q. (By Mr. Stottle) Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?"

"A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work."

Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

"Trial Examiner Batten: We are not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify."

"I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters."

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit the respondent to show the provisions contained in working agreements between the International Union and other garment manufacturing companies in Kansas City, Missouri, as tending to show the bona fides of the negotiations between respondent and intervenor as to the bargaining contracts between respondent and intervenor, and as tending to refute testimony offered by the Board and the International Union that said contracts between respondent and intervenor were not bona fide and did not show genuine bargaining.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner as shown by the following excerpts from the transcript of the record, Pages 857, 858, 862, 864, 865, 866, to-wit:

"Q. (By Mr. Stottle) Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts—* * * in this city with the International Ladies' Garment Workers' Union?"

"Mr. Leary: Let the record show my objection, Mr. Examiner.

"Trial Examiner Batten: What is your objection?"

"Mr. Leary: On the ground it is incompetent, irrelevant and immaterial.

"Mr. Langsdale: The union wants to further object upon the ground it is immaterial and doesn't bear upon any of the issues before the Examiner unless we want to go into all of those contracts and show where they started from, how they built them up, and even go into some of them as early as 1933 to show that they were then getting \$3 and \$4 a week, and the union came along and built them up to their present contract. That hasn't any bearing upon whether or not this is a company dominated union or any of the charges in the complaint.

[fol. 6454] "Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that

the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the [county]. It is competent for that purpose.

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"The point has been raised that Miss Todd and other members of the committee didn't really negotiate.

"Here is a company that has been paying good wages, here is a company that treats its employees fairly, here is a company that does not try to beat down the wages. These employees come in and say they want to bargain collectively and want to enter into a written contract.

"The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees have better wages than are contained in any of these other contracts. I think that is very conclusive evidence that this union is properly representing the employees.

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"Mr. Ingraham: I certainly think, Your Honor, that since Mr. Langsdale has gone into the question of the negotiations, and he said, 'Now, do you think this was good for your people? Do you think that provision was good for the members of your union?' I think in view of that examination of this witness we are certainly entitled to show just what contract was obtained, and of course it will show that the company gave up a great deal. The company signed a contract—

"Trial Examiner Batten (Interrupting): Mr. Ingraham, you may go ahead on the basis you are now talking just as fully as you desire. In fact, I want you to show the negotiations, the bargaining, and the process that was gone through in arriving at it. You may go into that as fully as you care to, but I am not going to go into this matter from the standpoint of comparison with other companies here or any other place.

"Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener [fol. 6455] asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fides of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

"Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

"I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case."

221.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the motion of the Board's attorney and striking answers of the witness Rose Todd as shown by the following excerpts from the transcript of the record, pages 872, 873, to-wit:

"Q. Miss Todd, it is alleged in the complaint that the company caused a violent demonstration against Fern Sigler and others as a means of causing the employees either to join the Donnelly Garment Workers Union or to refrain from joining the International Union. I hand you here a paper which is marked Respondent's Exhibit No. 1, and will ask you if that is one of the notices in the newspapers that you have referred to that caused the incident at the plant that you testified about?

(Thereupon, the newspaper clipping above referred to was marked "Respondent's Exhibit No. 1" for identification.)

"Mr. Langsdale: I object to that as an improper question. She is merely handed the document and asked to identify it, and he tacks onto that question, 'Was it some- [fol. 6456] thing that caused the incident about Fern Sigler at the plant'.

"Q. (By Trial Examiner Batten) Have you seen that before, or read it? A. Yes.

"Q. At the time it was in the paper, is that it?

"A. Yes, sir. That is very definitely what caused that disturbance that morning.

*"Mr. Leary: What was that?

"The Witness: That article in the paper, Sylvia saying she was going to represent the employees—

"Mr. Leary: I move that the witness' statement be stricken out. I asked the reporter what the witness' answer was.

(Thereupon the last answer was read by the reporter.)

"Mr. Leary: I move that it be stricken as not responsive.

"The Witness: Why, yes, it is, Mr. Leary, isn't it?

"Mr. Leary: I said I move that the last statement of the witness be stricken as not responsive.

"Trial Examiner Batten: It will be stricken."

And in refusing to admit respondent's Exhibit No. 1 for the purpose of showing that the matters recited in said exhibit were the cause of the alleged demonstration against Fern Sigler on April 23, 1937 which ruling and action appear on Pages 873 through 878 of the transcript of the record.

Respondent further excepts to the ruling and action of the Trial Examiner in refusing to permit the witness Rose Todd to answer the following question appearing on Page 874 of the transcript of the record, to wit:

"Q. And is that, the printing of that article in the paper and the seeing of it by the employees, is that what caused the demonstration against Fern Sigler on the morning of April 23d?"

and in refusing to permit the witness Rose Todd to testify that the matters in the paper referred to in said question, [fol. 6457] to-wit, respondent's Exhibit No. 1, was the cause of the demonstration against Fern Sigler on April 23, 1937.

223.

Respondent excepts to the ruling and action of the Trial Examiner sustaining the objection of the International Ladies' Garment Workers' Union to a portion of the answer of the witness Rose Todd set forth on Page 887 of the transcript of the record, as shown by the following excerpts from the transcript of the record, Pages 886, 887, 888, to-wit:

"Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?"

"A. Yes, we felt like that is a good contract. We have certain things that we had to give—

"Mr. Langsdale (interrupting): I object to this part of the answer as voluntary and not responsive. Her answer to the question was 'Yes'.

"Trial Examiner Batten: I will sustain the objection.

224.

Respondent excepts to the ruling and action of the Trial Examiner excluding evidence of the witness Rose Todd concerning violence and activities at other garment plants in Kansas City, which rulings are set forth in the following excerpts from the transcript of the record, Pages 908, 909, to-wit:

"Q. (By Mr. Tyler) Had you or had you not seen notices in the papers of physical violence at the Gernes plant?"

[fol. 6458] "Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gernes plant.

"Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason—whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

"Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

"Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testimony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

"Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

"Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it."

Respondent excepts to the ruling and action of the Trial Examiner in excluding similar evidence, which rulings and action are set forth in the transcript of the record at Pages 910, 911, 913, to-wit:

"Q. Did you see any of the banners or signs the pickets carried? A. Yes, sir."

Q. Do you remember what they said on them?

[fol. 6459] "Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters."

"Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made."

"Trial Examiner Batten: I would suggest you embody that all in an offer of proof."

"Mr. Tyler: I submit to your Honor that in showing what their real choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit they have a right to give their reasons for preferring their own union."

"Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof."

"Mr. Stottle: Mr. Examiner, you have stated every party has an exception without asking for it?"

"Trial Examiner Batten: That is right."

"Mr. Stottle: In order that it might be clear, would the respondent be granted an exception to a question asked by the intervenor when it is overruled?"

"Trial Examiner Batten: All parties receive exceptions to all adverse rulings."

"Mr. Stottle: You might not deem it adverse to us."

"Trial Examiner Batten: I am not going to pass on that. If the parties deem it adverse you may have the exception. In other words, I do not intend to go through the record and determine whether it is adverse to certain parties or not.

"Mr. Stottle: I am not objecting to the intervener—I asked if I would have an exception to the Examiner's [fol. 6460] ruling, even though the ruling was made to a question asked by the Intervener.

"Trial Examiner Batten: I would say yes.

"Mr. Langsdale: Even if he does not make an objection?

"Trial Examiner Batten: Yes, if it is adverse."

226.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to receive evidence concerning the violence and activities of the International Union at other garment factories in Kansas City and the effect thereof upon the employees of respondent and in refusing to accept the offer of proof made thereon by the intervener at Pages 913, 914, 916 of the transcript of the record, as follows, to wit:

"Mr. Tyler: I wish to make an offer of proof.

"Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

"Mr. Leary: I object to the offer of proof, Mr. Examiner.

"Trial Examiner Batten: The offer is denied."

Respondent excepts to the comments of the Trial Examiner on Pages 956, 957, of the transcript of the record with reference to the minutes of the Donnelly Garment Workers' Union because such comments show the bias and prejudice of the Trial Examiner and his intention to disregard the [fol. 6461] minutes as evidence in this proceeding; in so far as same are favorable to respondent.

Respondent excepts to the rulings and action of the Trial Examiner in striking the answers of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 966, 967 as follows, to wit:

"Q. (By Trial Examiner Batten): Now, what was the situation before the contract?

"A. The situation before had been that the employer had the right to increase or reduce his working force, but this contract gives the union also the right to interfere if he feels so—if we feel that someone is being allowed to go unnecessarily.

"Q. You mean because of the union activity?

"A. Well, no, not necessarily that. We certainly would do that if they were being let go because of union activity, but if they were being let go and we felt it was not right, the union still has the right to go to the employer and see if these people couldn't be retained.

"Mr. Langsdale: Now, I object to that answer and ask that it be stricken out as an explanation for paragraph 14; because there isn't anything in paragraph 14 upon which to base that statement or conclusion; not anything. That says, 'The employer shall have the right to discharge.'

"Trial Examiner Batten: I was just getting ready to ask another question or two, but in view of your motion I will have it stricken. I was going into that some more. You may proceed."

Respondent excepts to the ruling and action of the Trial Examiner and his comments upon the testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record at Page 970, to wit:

[fol. 6462] " * * * This Group 1 operators gives these operators a much higher guarantee than they had ever been guaranteed before. Forty per cent of them receiving—

"Mr. Langsdale (Interrupting): Now, I object to that answer as a conclusion upon the part of the witness. The evidence ought to be as to what the increase is.

"Mr. Tyler: I think it is desirable that she should give the figures as she knows them, but I think that if she can say as a fact that the figures are higher, she is entitled to state that, even if she can't give the figures.

"Trial Examiner Batten: I don't think it means a thing in the way she answered, much higher. If she doesn't know, let's get somebody here that does. I mean, there is no use trying to have a witness answer questions that they can't answer. Now, surely there is somebody in the organization or with the respondent who could very definitely state, Mr. Tyler."

230

Respondent excepts to the ruling and action of the Trial Examiner excluding and refusing to hear or consider evidence comparing the wages and other working conditions provided for in the contract between the respondent and Donnelly Garment Workers' Union in comparison with like wages and conditions existing under contracts between the International Ladies' Garment Workers' Union and other garment manufacturing companies in and about Kansas City, Missouri.

In connection with the foregoing exception, respondent excepts to the rulings, comments and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at Pages 981, 982, 983, to wit:

"Q. Miss Todd, did you hear the testimony of Velma Dowdy in the injunction suit tried before Judge Miller?

"A. Yes, sir.

[fol. 6463] "Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year— * * * the figures she testified she paid to the International Ladies' Garment Workers' Union as a

member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

"Now, don't answer yet.

"Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

"Trial Examiner Batten: I now rule it is absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' and the Donnelly Garment Workers' Unions. The International Ladies' Garment Workers' Union is not on trial here, neither is the Donnelly Garment Workers' Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it."

231.

Respondent excepts to the ruling and action of the Trial Examiner refusing to hear or consider evidence concerning the application of the Donnelly Garment Workers' Union that the Labor Board hold an election by respondent's employees as to the bargaining agency or union which they desired to represent them.

"In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record at Pages 1000, 1001, to wit:

[fol. 6464] "Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees?

"A. Yes, Sir.

"Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

"Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned.

"Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

"Mr. Tyler: Then, I wish to make an offer of proof.

"Trial Examiner Batten: You may make an offer of proof."

"Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was, devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attorney to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller."

232.

Respondent excepts to the ruling and action of the Trial Examiner striking portion of the answer of the witness Rose Todd as set forth in the following excerpts from the transcript of the record at Page 1018, to wit:

[fol. 6465] "Q. Have any request been made by the union from the company for permission to use those bulletin boards?

"A. No, sir. Anybody uses them, and we have just used them.

"Mr. Leary: I move to strike all except the first two words of her answer as not responsive.

"Trial Examiner Batten: It may be stricken."

233.

Respondent excepts to the ruling, action and comments of the Trial Examiner upon testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 1018, 1019, to wit:

"Q. (By Mr. Tyler): Now, at the time you received what I believe you have testified to as the only raise you have had from the company, is it or is it not a fact that a large number of employees received raises at the same time?"

"A. It is a fact."

"Mr. Langsdale: I object to this constant leading of this witness, his own witness, his own client, and I suggest that the payroll is the best evidence of that. How does this woman know what was on everybody's envelope or everybody's check?"

"Q. (By Mr. Tyler) She has not testified to everybody's envelope or everybody's check."

"Trial Examiner Batten: Mr. Langsdale, I think your objection goes to the weight that may be given this testimony. If that remains as it now stands, without any co-operation, or anything of the kind, certainly the Examiner nor the Board could give a great deal of weight to it."

234.

Respondent excepts to the ruling and action of the Trial Examiner striking a portion of the answer of the witness Rose Todd as set forth in the following excerpt from the transcript of the record, Page 1037, to wit:

[fol. 6466] "Q. Had you prior to March 18, 1937, ever been required to show an identification card in order to gain admittance to the plant?"

A. No, sir, I don't recall any need for one before that."

"Mr. Langsdale: I ask that the latter part of the answer be stricken out as not responsive, and voluntary."

"Trial Examiner Batten: It may be stricken."

Respondent excepts to the ruling and action of the Trial Examiner in admitting evidence and exhibits concerning the Nelly Don Country Club, which testimony and exhibits are set forth and referred to on Pages 1158 to 1167 of the transcript of the record, for the reason that same are wholly immaterial to any of the issues herein.

In connection with the foregoing exception, respondent excepts to the ruling, action and comments of the Trial Examiner in admitting the testimony and refusing to sustain respondent's and intervener's objections, as set forth in the following excerpts from the transcript of the record at Pages 1158, 1159, 1160, 1161, 1163, to wit:

"Q. Is there another association, I mean different from any of those that have up to now been mentioned, to which you pay \$2 a year dues?

"Mr. Stottle. Mr. Examiner, respondent objects to getting into still additional organizations, if there are any. Certainly the respondent has a right to provide a country club for its employees if they want to, and let them pay so much a month. There is no showing that it is done for the Donnelly Garment Workers' Union.

"Trial Examiner Batten: I don't suppose there is any argument that the respondent could furnish the employees a country club for nothing if they wanted to."

[fol. 6467] "Mr. Stottle. And of course it would not be material to these issues.

"Trial Examiner Batten. I can't determine whether it is material or not until I find out about this matter of these rentals Mr. Langsdale is inquiring about.

"Mr. Langsdale. Read the question, please.

(Thereupon the last question was read by the reporter)

"A. I haven't mentioned all of the ones there are.

"Q. (By Mr. Langsdale) To whom do you pay this \$2 a year?

"A. I think that card says "Nelly Don Country Club."

"Q. I hand you this card which has been marked International Ladies' Garment Workers' Union's Exhibit No.

3 and ask you state what it is—not what is on it, but what it is.

“A. It is a membership card of the club out there.

(Thereupon the card above referred to was marked “International Ladies’ Garment Workers’ Union’s Exhibit No. 3”)

“Mr. Langsdale: I offer Exhibit No. 3.

“Mr. Stottle: Respondent objects on the ground that it is wholly immaterial to any of the issues in this case.

“Trial Examiner Batten: Thus far I don’t see that it has any bearing.

“Mr. Langsdale: I want to ask some questions about it.

“Trial Examiner Batten: You may proceed.

“Mr. Lane: Intervener objects to International’s Exhibit No. 3 for the reason that it is not material—it is not within any of the pleadings in this case, and for the reason that it opens up ramifications that are wholly outside of any proper inquiry in this investigation.

“Trial Examiner Batten: You may proceed until I can determine. And if when he completes this matter, Mr. Lane, if it is not connected up with the issues in any way you may make a motion to have it stricken and it will be stricken.

“Well, has the membership, the club membership, anything to do with whether or not members of the Loyalty League have the privilege of going to the club house to a Loyalty League party?

“Mr. Stottle: Respondent objects to that as being speculative as to whether there was a Loyalty League party [fol. 6468] or what Loyalty League party, wholly immaterial or any issues. It has been testified heretofore that the employees of the Donnelly Garment Company, a great many of them, belong to the Loyalty League, that a great many of them belong to the Donnelly Garment Workers’ Union, that a great many of them belong to this club business, a great many of them belong to the Athletic Association. If anything is done down there that involves employees, there is bound to be certain overlapping.”

Respondent excepts to the ruling and action of the Trial Examiner in permitting counsel for the International Union to prove his offer of proof by the witness Rose Todd and in doing so to ask the questions to which the Examiner had sustained objections, and in failing and refusing to strike said offer of proof when it appeared that the International Union was unable to prove such offer by the witness, as appears from the transcript of the record, Pages 1189 to 1193.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner referred to in the foregoing exception as same further appear in the following excerpts from the transcript of the record, Pages 1189, 1192, 1193, to wit:

"Mr. Langsdale: All right, I offer to prove that, and also offer to prove that she examined all of this data during working hours, and that sometimes it amounted to 1,300 different employees or thereabouts, and that it took, many, many hours of the company's time to make the examination. That is the offer of proof I make.

"Trial Examiner Batten: Well, I will permit you to prove that by this witness.

"Mr. Stottle: Mr. Examiner, the respondent, if Mr. Langsdale is finished with that offer of proof, moves that [fol. 6469] the latter part be stricken from the record as not made in good faith, because he hasn't asked the witness to go ahead and state that she spent hundreds of hours, or whatever this offer of proof was, on this matter.

"Mr. Langsdale: Well, I—

"Mr. Stottle (interrupting): It was just—it is not fair to have it appear in the record that he made an offer of proof by this witness—

"Trial Examiner Batten: Well, Mr. Stottle, I think—I think that Mr. Langsdale's offer of proof, and the questioning of the witness subsequent thereto speaks for itself."

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's objection and receiving evidence as shown by the following excerpts from the transcript of the record, Pages 1196, 1197, to wit:

"Q. I note that in January, 1938, Fred Brown got another raise, from \$97 to \$108.54 every two weeks. Do you know whether or not that is a fact?

"A. No, Mr. Langsdale, I don't.

"Mr. Stottle: Mr. Examiner, respondent objects to this evidence as being immaterial, what different employees; of which there are 1,200 or 1,300 down there—what raises in pay they may have received. The answers have all been in the negative and there is probably no evidence on it as yet, but it seems to me it is immaterial.

"Trial Examiner Batten: Mr. Stottle, in the first place, I don't suppose she knows about these matters. And, in the second place, I cannot tell now whether it is material or whether it isn't. If Mr. Langsdale has the records and that is what they show—

"Mr. Langsdale (interrupting): We will bring them in, but I think I have a right to inquire whether or not the president of the union knew about these matters.

"Trial Examiner Batten: I am not telling you to discontinue.

[fol. 6470]

238.

Respondent excepts to the ruling and action of the Trial Examiner as set forth on Page 1199 of the Transcript of the record, to wit:

"Do you know whether or not Mr. McConaughy's change from the mechanical department to the bookkeeping department was because he was a member of your board of chairmen?

"Mr. Lane: I object to that as calling for a conclusion of the witness.

"Trial Examiner Batten: Well, I presume the president of the organization, Mr. Lane, ought to know or not

know. As far as she knows, she may state whether that was the reason."

239.

Respondent excepts to the ruling and action of the Trial Examiner in permitting the witness Rose Todd to testify to her interpretation of the written contract between respondent and the Donnelly Garment Workers' Union over the objection of the respondent, which objection and the ruling of the Examiner thereon is set forth in the following excerpts from the transcript of the record, Pages 1203, 1204, to wit:

"Q. Now, are those percentages invariable? Are they fixed or do they vary?

"Mr. Stottle: Mr. Examiner, I make the objection that the written contract provides concerning that, and it is binding, and that this is asking the witness to interpret the contract.

"Trial Examiner Batten (interrupting): Well, if it is applied to this question, I have no objection. I would overrule the objection."

[fol. 6471]

240.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's motion to strike answer of the witness May Fike, which answer, motion and ruling are set forth in the following excerpts from the transcript of the record, Pages 1256, 1257, to wit:

"Q. Who would tell you to lay off when your vacation was coming?

"A. Well, I don't remember how we knew our vacation was coming. I suppose our instructor would tell us when it came time for our vacation or when our vacation time was up.

"Mr. Ingraham: I move that the answer be stricken. She 'supposes' that that was done.

"Trial Examiner Batten: I will permit it to stand. I have permitted a lot of others to stand that were apparently supposing or thinking. It may stand for whatever value it has."

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence over the objections of the respondent and intervenor Board's Exhibit No. 14, purporting to be the pledge signed for the Loyalty League which objection and the rulings of the Trial Examiner thereon appear in the following excerpts from the transcript of the record, Pages 1267, 1268, to wit:

"Mr. Lane. I object to exhibit No. 14 for the reason that it has not been properly indentified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

"Trial Examiner Batten. It will be received.

"Mr. Ingraham. Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case."

[fol. 6472] "Trial Examiner Batten. It is received."

Respondent excepts to the ruling and action of the Trial Examiner overruling the objections of the respondent to testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Page 1269, to wit:

"Q. Do you know whether or not she said anything at the time?

"A. She said we should sign and pass that to the next girl, if I remember right.

"Mr. Ingraham. Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

"Trial Examiner Batten. Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.

"Mr. Stottle. We further object because it is not identified as to what instructor said that.

"Trial Examiner Batten: She may proceed."

243.

Respondent excepts to the rulings and action of the Trial Examiner in overruling the objections of respondent and intervener and receiving testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1269, 1270, 1271.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in failing to sustain the objections to the testimony above referred to and the continuing objection of the respondent and intervener to said line of testimony, and further excepts to the action of the Trial Examiner in permitting [fol. 6473] said witness to continue to testify to said matters.

244.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpt from the transcript of the record, Pages 1288, 1289, to wit:

"Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

"A. There is never no papers come into that section that she don't know about it before the girls get them, and—

"Mr. Lane. I move to strike the answer as not responsive.

"Trial Examiner Batten. Let her finish.

"Mr. Lane. I thought she had finished.

"Trial Examiner Batten. She was saying something else there.

"Q. (By Trial Examiner Batten). What were you saying?

"A. She is notified of what comes into that section before the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

"Q. (By Mr. Leary) Can she see—

"Mr. Lane. (Interrupting) Just a moment. If the witness has now finished her answer, I move that it be stricken for the reason that it is not responsive.

"Trial Examiner Batten. It may stand.

"Mr. Ingraham. Respondent makes the same objection.

"Trial Examiner Batten. Objection overruled.

"Mr. Lane. I object to it further for the reason that it calls for a conclusion on the part of the witness.

"Trial Examiner Batten. Objection overruled."

245.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's and intervener's [fol. 6474] motions to strike testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1292, 1293 to wit:

"Q. What, if anything, did Fern Sigler say to you about the union button?

"Mr. Ingraham: I object to that as hearsay.

"Trial Examiner Batten. You may answer.

"A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job."

"She said, well, she was going to wear it anyway. And I said, 'Well, I will lose mine too'. And she said, well, she didn't think I would—I don't remember her exact words, but something to that effect.

"She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn't in the same place mine was. That is the last I talked to her until the evening of the 23d.

"Mr. Ingraham: I move that the answer be stricken out—I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self-serving.

"Mr. Lane: Intervener makes the same objection and the same motion to strike.

"Trial Examiner Batten: Objection overruled— *****
and the motion to strike is denied."

246.

Respondent excepts to the rulings and actions of the Trial Examiner admitting the evidence of the witness May Fike and refusing to strike same upon motions of respondent and intervener concerning remarks alleged to have been made by a group of employees to Fern Sigler on April 23, 1937, for the reason that the witness was unable to state who made the alleged remarks, which objections, motions and rulings appear on Pages 1296, 1297, 1298, [fol. 6475] 1299, of the transcript of the record.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record, Pages 1305, 1306, 1307, to wit:

"Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

"A. Well, of course they were all hollering. I couldn't describe now which ones did say which.

"Trial Examiner Batten: That is all.

"Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

"Trial Examiner Batten: The motion is denied.

"Mr. Ingraham: Respondent makes the same motion.

"Trial Examiner Batten: The motion is denied.

"Q. Have you told the Examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

"A. They told her she couldn't belong to the International Union and work in their shop.

"Mr. Lane: Intervener makes the same objection that has been heretofore made.

"Trial Examiner Batten: The objection heretofore made.

"Mr. Lane: To this same line of testimony. I made an objection to the nature of it, and I am renewing it now.

"Trial Examiner Batten: Objection overruled.

"Mr. Lane: In order not to burden the record, may I have a continuing objection?

"Trial Examiner Batten: You mean as to this incident of April 23?

"Mr. Lane: Yes, sir.

"Mr. Ingraham: Respondent moves to strike the answer out for the reason that it calls for hearsay testimony; and for the further reason that anything the employees said is not binding on the respondent.

[fol. 6476] "Trial Examiner Batten: Motion denied.

"Mr. Ingraham: And, Your Honor, may I have a continuing objection to this incident?

"Trial Examiner Batten: Yes, to this incident."

247.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpt from the transcript of the record, Page 1309, to wit:

"Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?

"A. No, sir, they didn't.

"Mr. Lane. I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

"Trial Examiner Batten: It may stand as it is."

248.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record, Pages 1310, 1311, 1312, to wit:

"Q. Did you hear any threats made to Fern Sigler?

"A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she

couldn't work with them and belong to that union—to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

“Mr. Ingraham. I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this third group, and has not identified anyone as making the remarks she has just stated.

[fol. 6477] “Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

“Trial Examiner Batten: The third objection, Mr. Ingraham, is overruled.”

249.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to strike the answer of the witness May Fike and denying the motion of respondent therefor as set forth in the following excerpts from the transcript of the record, Pages 1312, 1313, to-wit:

“Q. (By Trial Examiner Batten) Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?

“A. Well, Ethel Carpenter and Mary Sprofera told her they didn't want her in there. I am not sure about who said 'throw her out the window'. I think that was Mary Sprofera, but I am not sure about it.

“Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

“Trial Examiner Batten: Motion denied.”

250.

Respondent excepts to the ruling and action of the Trial Examiner in permitting the witness May Fike to testify

to the conversations and incident relating to Fern Sigler on April 23, 1937 and in overruling respondent's and intervener's various objections thereto, including the continuing objections to said testimony, some of which objections and rulings appear on Pages 1319, 1320 of the transcript of the record as follows, to-wit:

[fol. 6478] "Mr. Ingraham (interrupting): Now, just a minute. Your Honor, is my objection standing that it is hearsay and not binding?"

"Trial Examiner Batten: Well, I understood both Mr. Lane and Mr. Ingraham had a continuing objection to the incident of April 23, 1937.

"Mr. Ingraham: That is all—this, yes.

"Trial Examiner Batten: I mean, concerning all of this incident.

"Mr. Shepard: If your Honor please, I object to all of this as being absolutely irrelevant and immaterial, doesn't tend to prove anything in the case as to what these other operators have told her what they would do if Fern Sigler were her sister.

"Trial Examiner Batten: Well, you may proceed. I think we should have the whole story about these instances, irrespective of who said it."

251.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objections and motions of the respondent and intervener as set forth in the following excerpt from the transcript of the record, Page 1355, to-wit:

"Q. Did you consider that second floor company property? A. Yes, sir.

"Mr. Lane: That is objected to as calling for a conclusion on the part of the witness.

"Trial Examiner Batten: Well, I think, Mr. Leary, it certainly calls for a conclusion. If you want to let it stand, however, as it is, I will overrule the objection.

"Mr. Ingraham: Respondent moves that all statements as to what Pearl Atchison said be stricken out as not binding on respondent.

"Trial Examiner Batten: Denied. I think the objection goes primarily to the weight that can be given such testimony."

[fol. 6479]

252.

Respondent excepts to the rulings and actions of the Trial Examiner in permitting the witness May Fike to read the minutes of the Donnelly Garment Workers' Union meeting of April 27, 1937, prior to the examination of said witness by counsel for the International Ladies' Garment Workers' Union, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1341, 1342, 1343, 1344, 1345, to-wit:

"Q. Now, I show you, Mrs. Fike, what have been identified as Board's Exhibits Nos. 8-1 to 8-11 inclusive, which purport to be notes on a meeting held April 27, 1937, and ask you to read those notes or minutes and, at the conclusion of your reading them will you state to the Examiner whether the things related in those minutes actually happened, to the best of your recollection?

"Mr. Ingraham: Now, Your Honor, I submit that is highly improper procedure for an examination. He can ask this witness what took place at this meeting, or what she heard, but to hand her minutes and have her read the minutes and refresh her memory or put some ideas into her head, and then have her answer the question Yes or No about the minutes I say is improper.

"Mr. Shepard: Further, Your Honor, there has been no showing that the witness' memory needs to be refreshed. She says she attended that meeting. She should be questioned from her memory of that meeting.

"Mr. Lane: Intervener desires to object on the ground it is an illegal and improper method of examination.

"Trial Examiner Batten: Well, now, as I stated, if Mr. Leary wants to proceed this way, you may go ahead and read it and answer the question.

"Mr. Leary: Now, I will withdraw the question.

"Q. (By Mr. Leary) Who presided at that meeting, Mrs. Fike? A. Rose Todd.

[fol: 6480] "Mr. Tyler: I would like to ask if the witness has finished reading the minutes.

"The Witness: I haven't finished looking through them.

"Mr. Tyler (interrupting): I think the record ought to show—

"Mr. Tyler: I objected, that the record will show that Mr. Leary has handed the witness what purports to be, and I presume is, copies of the minutes of the first meeting, and asked her to read it, and then tell him whether that expresses what happened, and then after waiting long enough for her to almost read all of them, he then withdraws the question and presents another question as to what happened. Now, that destroys the possibility of ruling on whether it is a proper method of examination to ask her to read the minutes first, and then ask her what happened.

"Trial Examiner Batten: Well, Mr. Tyler, I have already ruled that as far as the Examiner is concerned, Mr. Leary's question was proper. I said it was not improper and I overruled the objection and permitted him to proceed in that manner if he wanted to, and he chose to withdraw the question, which he has a perfect right to do."

253.

Respondent excepts to the rulings and action of the Trial Examiner overruling the objections of the respondent and the intervener to Mr. Langsdale, as counsel for the International Union, being permitted to cross-examine the Board's witness, May Fike, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1359, 1360, to-wit:

"Trial Examiner Batten: Go ahead, Mr. Langsdale.

"Mr. Lane: Before Mr. Langsdale begins his examination, I desire to renew the objection I made at the time he began his examination of Miss Todd. I don't want to burden the record by being compelled to make that objection with respect to every witness' examination, but I do renew it here so the record is clear that I am not waiving that objection.

"Trial Examiner Batten: Just what was that objection?

[fol. 6481] "Mr. Lane: I objected to his examination of Miss Todd for the reason that his position as counsel for the International is one in unity with interest of that of the Board, and in view of that fact, he should not be permitted to have a separate examination of the witness the Board produces, separate from that of the Board itself.

"Trial Examiner Batten: Supposing that you be allowed a continuing objection.

"Mr. Lane: I would like the record to show that that objection will continue throughout the trial as to the witnesses the Board produces.

"Trial Examiner Batten: On that matter—and I will make the same ruling.

"Mr. Shepard: Your Honor, may the record show that the respondent makes the same objection and requests the same objection throughout the trial?

"Trial Examiner Batten: You may have the same objection and the same ruling, and a continuing objection."

254.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the objection of Mr. Langsdale to the witness May Fike testifying concerning the activities around the Missouri, Gernes and Gordon Garment Companies, and a discussion thereof around the Donnelly plant around April, 1937, as set forth in the following excerpts from the transcript of the record, Pages 1416, 1417, 1418, 1419, 1420, 1422, 1424, 1425, to-wit:

Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

"Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

[fol. 6482] "Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to

refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction and attitude, as having some bearing upon why they took the action they did take on the part of the union.

"Trial Examiner Batten: Mr. Lane, I will make the same ruling that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

"Now I am not going into this organizational campaign that took in the city of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the Union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

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"Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

"Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

"Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these

Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of the Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

[fol. 6483] "Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerney's or Gordon's, or anything of that sort.

"Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, 'Did anybody threaten you? Did anybody ever commit any violence as far as you were concerned?' I will receive that in this hearing, I don't want that in the form of an offer of proof.

"Mr. Lane: I want to make this further observation with respect to the question I asked:

I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by ideas of terrorism, which may or may not be true, nevertheless it is the state of mind which I want to show; and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union, whether founded upon fact or not.

"Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

"Mr. Lane: That was the purpose of my question, to show that fact.

"Trial Examiner Batten: And that matter, of course, will be included in this offer of proof.

Respondent excepts to the rulings and action of the Trial Examiner in admitting evidence of the witness Slotkin over the objections of the respondent as shown by the following excerpts from the transcript of the record, Pages 1437, 1438, 1439, to wit:

[fol. 6484] "Q. Now, I wonder, Mr. Slotkin, if you would turn to your books and state for the record the date, and the number of chairs delivered since 1935.

"Mr. Stottle: Mr. Examiner, the respondent objects to this upon the ground that it is immaterial as the way the question reads. Certainly, the company has a right to order chairs, and I don't see that it would have any tendency to prove or disprove any issue in this case, unless it is identified as certain times and places that would give it some relevancy.

"Trial Examiner Batten: Well, of course, I presume after we get the record of deliveries we can determine whether or not it has any relevancy or whether it has anything to do with this hearing. I will overrule the objection. You may state.

"Q. (By Trial Examiner Batten, interrupting) You mean, those are the original sheets, or those are copies?

"A. No, these are the original sheets from my ledger, as far back as I could go.

"Mr. Stottle: Mr. Examiner, we object on the ground those are not the books of original entries, but his original entries have been transferred to these sheets; and, further, on the ground that the entries there have not been shown to have been made by this particular witness.

"Q. (Interrupting) Pardon me, Mr. Slotkin. Can you tell who ordered those chairs?

"A. I can't tell you that at all. I have no invoices going back to this particular year. The only record I have is from 1938, August, until now, when I had a regular system installed by an auditor.

"Mr. Stottle: Now, Mr. Examiner, the respondent objects further on the ground there is no showing as to who ordered the chairs that he is purporting to testify about."

"Trial Examiner Batten: Well, he can read into the record what this ledger sheet shows. Now, if there are any further questions, Mr. Foster, I would suggest that you wait until he has read into the record just what this ledger sheet shows."

[fol. 6485]

256.

Respondent excepts to the rulings and action of the Trial Examiner in admitting the testimony of the witness Slotkin concerning chairs furnished by that company and in permitting said witness to testify concerning the account books and records of that company relative to chairs furnished and in admitting said accounts, ledger sheets and records as exhibits in this proceeding over the repeated objections of the respondent and intervener for the reason that said evidence is and was incompetent, irrelevant and immaterial to the issues herein, and because there was no showing as to what person or company ordered the chairs referred to in said testimony or paid for same, and because the records and entries testified from were not the original entries and there was not sufficient identification to show the authenticity of such entries or by whom same were made, and because said testimony and said entries and records did not constitute the best evidence, and because it affirmatively appeared that the witness did not know what person, union or company was chargeable with ordering the chairs referred to, and because it appeared from said witness's testimony that the entries concerning chairs ordered by the Donnelly Garment Workers' Union and chairs ordered by the Donnelly Garment Company and chairs if any ordered by the Donnelly Loyalty League and by the Nelly Don Athletic Association and any other chairs furnished to the address of respondent in the Corrigan Building were all entered under the same general account and no proper or sufficient [fol. 6486] designation made therein to show which of said organizations ordered or paid for the chairs referred to, for each and all of which reasons said testimony is not binding upon the respondent and is prejudicial to re-

spondent and does not support the findings, conclusions or recommendations of the Trial Examiner and does not constitute proper or competent evidence upon which the Trial Examiner or the Board should base findings or conclusions or any order against respondent.

In connection with the foregoing exception, respondent excepts to the findings, conclusions and recommendations of the Trial Examiner contained in the Intermediate Report for the reason that same are based in part upon the incompetent and indefinite evidence of the witness Slotkin.

257.

Respondent excepts to the rulings and action of the Trial Examiner in admitting the evidence of the witness Slotkin over the repeated and continued objections of the respondent which objections were directed to the whole line of testimony of said witness and which objections and rulings of the Trial Examiner are set forth in the following excerpts from the transcript of the record, Pages 1444, 1449, 1450, 1458, 1459, 1460, 1475, 1476, 1478, 1479, 1480, to wit.

"Mr. Stottle: Mr. Examiner, may it be understood our objection continues to all of this testimony, on the same ground, the witness did not make the entries, doesn't know who ordered the chairs—

"Trial Examiner Batten: You may have a continuing objection, Mr. Stottle.

[fol. 6487] "Q. I wonder if you would read whatever information is on those deposit slips pertaining to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. All the way through!

"Mr. Stottle: Do I understand, Mr. Examiner, our objection continues as to this testimony, also?

"Trial Examiner Batten: Yes, it may.

"Mr. Foster: I want to find out, if I can, who paid for these invoices for the use of these chairs; if there is anything on those deposit slips tending to show that, I want it read into the record.

"Mr. Stottle: Well, we add to our objection that this would not be the best evidence of whether the Donnelly Garment Company or the Donnelly Garment Workers' Union paid for them, as to what they might have written on the deposit slips.

"Trial Examiner Batten: Well, of course, I can't tell until I see what he is going to read, Mr. Stottle.

"Mr. Patten: I want to make a further objection and ask a qualifying question, that is, a preliminary question.

"Q. (By Mr. Patten) Mr. Slotkin, did you prepare the deposit slips yourself?

"A. Well, a few of them when the girl happened not to be at work or on vacation.

"Q. Is the person present who prepared the deposit slips?

"A. No, sir.

"Q. Is she still in the employ of your company?

"A. Well, part of these were prepared before she ever came to work at our company.

"Mr. Patten: Now, the intervener, Donnelly Garment Workers' Union, objects to the reading or introduction of these deposit slips for the reason that they are not the best evidence. Mr. Slotkin did not prepare them himself, and what somebody, some absent person unknown to [fol. 6888] this intervener may have put on there is not binding on this intervener.

"Trial Examiner Batten: The objection is overruled.
(p-1451)

"Trial Examiner Batten: Mr. Langsdale?

Cross-Examination

"Q. (By Mr. Langsdale) Mr. Slotkin, I hand you these pages which have been marked 'I.L.G.W.U. Exhibits 4, 5, 6 and 7' and ask you to state just what they are.

"A. They are the ledger sheets taken from the accounts receivable ledger.

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"Mr. Langsdale: We offer Exhibits 4, 5, 6 and 7 in evidence.

"Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any person authorized by the Donnelly Garment Company ordered any particular item on the list; that it is not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

"Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

"Trial Examiner Batten: Mr. Patten.

"Mr. Patten: Intervener objects for the reason that how the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and kept on one ledger sheet.

"Trial Examiner Batten: The objections are overruled. They will be received.

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"Q. Let me have those deposit slips you testified from (The deposit slips referred to were handed by the witness to Mr. Langsdale.)

"A. Those are the ones I testified to.

[fol. 6489] "Mr. Langsdale: Will you mark these as exhibits, please?

"Trial Examiner Batten: I would suggest that you mark those exhibit No. 8, 8-A, B, C, and so forth.

(Thereupon the deposit slips above referred to were marked 'I.L.G.W.U. Exhibits Nos. 8-A to 8-GG, inclusive.')

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"Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

"Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore urged, including the fact that they are not the best evidence; that there is no showing by this witness—

"Trial Examiner Batten (interrupting): Now, just a minute, on that point. What would be the best evidence?"

"Mr. Stottle: The best evidence I would say, or some of the best evidence, would be an invoice that had been sent to these different persons and the payment of this. This is just a deposit slip in the bank.

"Trial Examiner Batten: You mean the payment—you mean the check it was paid with?

"Mr. Stottle: Well, an invoice that it ~~had~~ been paid with. This is not even the check. It is just a notation on a bank slip.

"Trial Examiner Batten: That is true, but I assume that what we are trying to do here is get a complete record. I presume we will have to take it in part.

"Mr. Stottle: Well, that is one of the objections, that it is not the best evidence and hasn't any sufficient relation to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

[fol. 6490] "Trial Examiner Batten: That doesn't indicate that on these slips, does it?"

"Mr. Stottle: But the testimony taken together with these slips indicates that.

"Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evidence.

"Trial Examiner Batten: If there is no further objection, they will be received.

"Mr. Patten: Intervener makes the same objection as the respondent.

"Trial Examiner Batten: They will be received."

258.

In connection with the foregoing exception of the respondent, respondent excepts to the rulings and action of the Trial-Examiner in overruling the motion of the respondent to strike the evidence of the witness Slotkin, which motion and ruling are set forth in the transcript of the record, Pages 1483, 1484, as follows, to wit:

"Mr. Langsdale: I think that is all.

"Trial Examiner Batten: Mr. Stottle.

"Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner to give any credence to the statements because they are [fol. 6491] so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

"Trial Examiner Batten: The motion to strike is denied."

259.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's motion to strike I. L. G. W. U. Exhibits 4, 5, 6, and 7, which motion and rulings are set forth in the following excerpts from the transcript of the record, Pages 1489, 1490, 1491, to wit:

"Q. Isn't it a fact that these ledger sheets, I. L. G. W. U. Exhibits Nos. 4, 5, 6, and 7, were made up from those invoices or from other records of your company?"

"A. They were supposed to have been made up from the invoices.

"Q. (By Trial Examiner Batten) When you have a person call in for some chairs you immediately write out an order, is that it?"

"A. Yes, sir."

"Q. Is that written out in triplicate, duplicate, or—

"A. In triplicate.

"Q. Then it is from that record that the entries are made on this sheet, is that right?"

"A. That is right.

"Q. Then, you do have an invoice down there for each one of these items?"

"A. I don't know, for all of them. You see, our records were destroyed, a lot of them, when I came to work there. After a year I managed to get myself lined up so I could install a regular system.

[fol. 6492] "Q. You mean, up to a year ago you had no regular invoice records?"

"A. Nothing I could go to like I can now.

"Q. Have you anything—

"A. I might have some old invoices, a few of them, pertaining to those ledger sheets, and I might not.

"Q. What records were destroyed?"

"A. The invoices. You see, they are all mixed up.

"Q. You say you destroyed the invoice records?"

"A. They were destroyed. I didn't destroy them myself.

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"Q. Someone representing your company destroyed them?

"A. Yes.

"Q. In other words, then, you do not have the invoices or the carbons for these invoices running back over a year ago?

"A. No, sir.

"Mr. Stottle. Mr. Examiner, respondent now renews its objection to strike I. L. G. W. U. exhibits Nos. 4, 5, 6, and 7 for the reason that they are not the original entries but are made up from some other records which were not the original entries.

"Trial Examiner Batten: I think I denied the same motion awhile ago.

"Mr. Stottle: I understand, Mr. Examiner, but this fact has been brought out since then.

"Trial Examiner Batten: You certainly wouldn't expect him to produce invoices that had been destroyed, would you?

"Mr. Stottle: No. But he says these are not the original entries.

"Trial Examiner Batten: Well, that would go to the weight to be given to these.

[fol. 6493] "Mr. Stottle: May I explain the point is, those original entries might have had Donnelly Garment Workers' Union on the invoice. If we had those it would show who was the person who ordered them.

"Trial Examiner Batten: But, Mr Stottle, they are destroyed. If the record is destroyed it is impossible to get it."

260.

Respondent excepts to the rulings and action of the Trial Examiner in permitting the witness Slotkin to testify concerning Board's Exhibits Nos. 16-A to 16-E inclusive and in admitting said Exhibits 16-A to 16-E in evidence over the objections of the respondent, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1508, 1512, 1513, 1514, to wit:

"Redirect Examination

"Q. (By Mr. Foster) Mr. Slotkin, I hand you what has been marked for the purpose of identification as Board's exhibits Nos. 16-A to E, inclusive, and ask you what these are.

"A. They are invoices made out to the Donnelly Garment Company.

(Thereupon the invoices referred to above were marked 'Board's Exhibits Nos. 16-A to 16-E, inclusive'.)

"Q. Are they carbon copies of invoices that were sent to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. They are supposed to be. They are carbon copies.

"Q. What do you mean by 'They are supposed to be'? Are they or are they not?

"Mr. Stottle: Mr. Examiner, respondent objects to this as not proper redirect examination. It should have been gone into in chief.

"Trial Examiner Batten: You may proceed.

[fol. 6494] "Mr. Foster: Then, the Board will offer in evidence at this time what has been marked for identification Board's exhibits Nos. 16-A to 16-E, inclusive."

"Mr. Stottle: Well, Mr. Examiner, the respondent objects to the introduction of Exhibits 16-A to 16-E, for the reason that they are testified to be carbon copies of Intervener's Exhibits 11 and others, whereas, an examination of Intervener's Exhibit 11 shows that they are written in ink and that this is not a carbon copy of it.

"Mr. Stottle: Well, the objection is that it is purportedly testified that these are carbon copies of Intervener's Exhibits and an inspection of it will show they are not carbon copies at all of this, because the handwriting is entirely different. This is in ink and it doesn't show through on the same wording that is on the alleged carbon copy

at all, and for the further reason they haven't been identified in such a way as to make them admissible, or to show they are original records.

"Mr. Tyler: The intervenor objects on the ground the witness ought to be allowed to examine the original rather than what is alleged to be a carbon copy before he is asked to testify whether they are carbon copies or not.

"Trial Examiner Batten: Well, the witness has already testified these are carbon copies, which he has taken out of his office, and if there are any discrepancies I presume this would be the place to explain them, if there is any explaining to do. They will be received."

261.

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to sustain respondent's motion to strike answer of the witness Mrs. Greenhaw as set forth in the following excerpt from the transcript of the record, Page 1596, to wit:

"Q. Did Miss Alexander have an assistant?

"A. Yes.

"Q. Who was that?

[fol. 6495] "A. Miss Elizabeth Nobles, who, I think, would be called her assistant.

"Mr. Ingraham: I move the answer be stricken out, as the witness says she thinks Miss Nobles would be an assistant.

"Trial Examiner Batten: Well, I presume on cross-examination Mr. Ingraham, you may go into that and see whether there is any basis for the statement. I hardly think at this stage that I would strike out or sustain an objection when the witness says she has an opinion, because I think we have had quite a few of them thus far.

"You may proceed, Mr. Leary."

262.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 17 over the objection of the respondent which objection and ruling are set forth in the following excerpts

from the transcripts of the record, Pages 1598, 1599, 1600, to wit:

"Q. I show you what has been marked for identification as Board's Exhibit No. 17 and ask you to state briefly what that document is.

"A. It was a record of the amount of letters written by the department that day, and who dictated them, and who wrote them. A few were written by the girls themselves; that is, form letters or letters that were of a similar nature; some of the girls, of course, would transcribe those themselves.

"Mr. Leary: The Board offers its exhibit No 17.

"Mr. Ingraham: Respondent objects to the introduction of Board's exhibit No. 17 for the reason that it is immaterial and irrelevant to any issue in this case. And, respondent moves that the witness' testimony be stricken out for the same reason.

"Mr. Lane: Intervener makes the same objection and motion.

"Trial Examiner Batten: Mr. Leary, what have you to say?

[fol. 6496] "Mr. Leary: I believe there has been testimony regarding the membership of Miss Alexander and Miss Nobles in the Donnelly Garment Workers' Union. Mr. Examiner, and I believe this goes to show these persons were of a supervisory nature. There is no better proof in the world than to have this daily check-off; it is somewhat like an efficiency system the company uses to check up on the work done by even the stenographers in the office daily, all handled by the persons Alexander and Nobles.

"Trial Examiner Batten: It will be received."

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence and refusing to strike answer of the witness Mrs. Greenhaw as set forth in the

following excerpts from the transcript of the record, Page 1603, to wit:

"Q. Now, with reference to this meeting where Mrs. Reed talked to the employees, I ask you to state in what manner you were advised that the meeting would be held?

"A. I think we were informed by the head of our department.

"Mr. Ingraham: I move the answer be stricken out as speculative.

"Trial Examiner Batten: It may stand."

264.

Respondents excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 18 also referred to as Board's Exhibits 18-A to 18-J inclusive, over the objections of the respondent and intervenor; which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1610, 1611, 1613, to wit:

[fol. 6497] "Q. I show you what has been marked as Board's Exhibit 18, Mrs. Greenhaw, and ask you to state briefly what that is.

"A. This is a copy of the minutes of the meeting of the Donnelly Garment Workers' Union on May 25, 1937.

"(Thereupon, the documents above referred to were marked as 'Board's Exhibits Nos. 18-A to 18-J, inclusive' for identification.)

"Mr. Leary: The Board offers its Exhibit 18-A to 18-J.

"Mr. Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

"Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they 'doctored' those minutes, and now we have what

she says is a carbon copy of the minutes she turned over to Marjorie Green, and Marjorie Green produces what she says is the original.

"Mr. Lane: Intervener objects to it on the ground that it is not identified.

"Mr. Leary: In what particular?

"Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

"Trial Examiner Batten: It will be received.

265.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence and refusing to strike upon motions of the respondent answers of the witness Mrs. Greenhaw as set forth in the following excerpts from the transcript of the record, Pages 1615, 1616, to wit:

"Q. Do you know what Mr. Marvin Price's work was?

"A. Yes.

[fol. 6498] "Q. Will you please state what it was?

"A. I think he was called custodian, and I believe he was in charge of the ordering of materials of all sorts for that building.

"Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Q. (By Mr. Leary) And when you say 'materials for the building' do you distinguish in your answer from other materials that are ordered in the operation of the business?

"A. Yes. He had no connection with the ordering of piece goods and that sort of thing.

"Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

"Trial Examiner Batten: It may stand."

266.

Respondent excepts to the rulings and action of the Trial Examiner in admitting testimony of the witness Mrs.

Greenhaw and in overruling the objections and motions to strike of the respondent and intervener thereto as set forth in the following excerpts from the transcript of the record, Pages 1619, 1620, to wit:

"Q. (By Mr. Leary) During the months of March and April and May, 1937, Mrs. Greenhaw, did you note anything unusual in the conduct of Miss Rose Todd while she was on the tenth floor?

"Mr. Lane: That is objected to as calling for a conclusion.

"Trial Examiner Batten: You may answer.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled.

[fol. 6499] "Trial Examiner Batten (interrupting): Well, now, you can just say 'yes' or 'no' to that question, whether you did.

"A. Yes.

"Q. (By Mr. Leary) What was it that you noticed, Mrs. Greenhaw?

"Mr. Ingraham: I make the same objection.

"Trial Examiner Batten: Same ruling.

"Mr. Lane: Intervener makes the same objection.

"A. I noticed that she was more than usually active in contact with the executives of the company.

"Mr. Lane: I move to strike the answer out as a mere conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Mr. Ingraham: Same objection. Respondent makes the same objection—the same motion to strike.

"Trial Examiner Batten: Motion denied."

Respondent excepts to the rulings and action of the Trial Examiner admitting in evidence testimony of the witness Mrs. Greenhaw as set forth in the following ex-

cerpts from the transcript of the record, Pages 1622, 1623, 1624, to wit:

"Q. (By Mr. Leary) Did this occasion when you saw the representative group of employees with Miss Todd to the tenth floor occur after the meeting when the Donnelly Garment Workers' was formed—Donnelly Garment Workers' Union was formed?

"Mr. Patten: Just a moment, please. I don't believe she has testified she saw a group of employees with Miss Todd. The question assumes she has so testified.

"Mr. Leary: I submit her testimony was that it was a representative group from the employees all over the plant.

[fol. 6500]. "Q. (By Trial Examiner Batten) Was Miss Todd with this group?

"A. I couldn't testify as to that, but I remember the occasion because it was rather unusual for people from the factory to be brought up on the tenth floor.

"Q. Now, do you remember about when this was?

"A. I remember, because a meeting took place the same day.

"Q. Well, what meeting?

"A. I am assuming it was the meeting—

"Q. (Interrupting) Well, tell me what occurred at the meeting that you say occurred the same day.

"A. There was, a committee was announced, who would represent the employees as—I don't remember how they were designated, but they were to be union representatives among the employees.

"Q. (By Mr. Leary) Was it before that meeting, Mrs. Greenhaw, that you saw this group of employees up on the tenth floor?

"A. Yes.

"Q. In Mrs. Reed's office? "A. Yes.

"Mr. Lane: I move to strike it out for the reason that the time is not fixed.

"Trial Examiner, Batten: It may stand."

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence testimony of the witness Mrs. Greenhaw over the objections of the respondent and intervener, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1624, 1625, to wit:

[fol. 6501] "Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?"

"A. Yes."

"Q. Do you remember any particular conversation that you had with him?"

"A. We had a short discussion of the strike that was being held at Gordon's at that time."

"Q. And what, if anything, was said by Mr. Green—"

"Mr. Ingraham (interrupting): I object. It calls for hearsay—"

"Mr. Leary (interrupting): Wait until I finish my question, please."

"Q. (By Mr. Leary) What, if anything, was said by Mr. Green at that time with regard to the strike at Gordon's?"

"Mr. Ingraham: I object. It calls for hearsay testimony."

"Trial Examiner Batten: Well, I will overrule the objection as to hearsay, but the thing I am concerned about, I don't want to get into all these other strikes. Now, she may answer the question and then I will determine whether or not it may be stricken."

"Mr. Lane: Intervener makes the same objection, that it is hearsay."

"Trial Examiner Batten: Same ruling."

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence and permitting the witness Mrs. Greenhaw to answer question over respondent's objections as set forth in the following excerpt from the transcript of the record, Page 1641, to wit:

[fol. 6502] "Q. When you first went to work for the Donnelly Company you stated that you were in the returns department. Who was your superior in that department?

"Mr. Ingraham: I object to that as repetition.

"Mr. Langsdale: She hasn't stated that.

"Mr. Ingraham: It calls for a conclusion of the witness.

"Trial Examiner Batten: I didn't make any note of it— You may answer. I don't think she mentioned anybody."

270.

Respondent excepts to the rulings, comments and action of the Trial Examiner announcing his purpose and refusal to permit testimony of respondent's employees to the effect that they selected the Donnelly Garment Workers' Union of their own free will or to tell the circumstances under which they signed petition marked I. L. G. W. U. exhibits Nos. 11-A to 11-MM inclusive, and in refusing to admit said exhibits in evidence, and in stating and announcing that the Trial Examiner would not allow respondent's employees to take the stand and testify that they were not dominated and that they did form the Donnelly Garment Workers' Union of their own free will, over the objections of the respondent and intervener, and in overruling respondent's motion to strike from the complaint and dismiss the charge that the Donnelly Garment Workers' Union is a dominated union, which rulings, comments, objections and motions are set forth in the following excerpts from the transcript of the record, Pages 1651, 1652, 1653, 1654, 1655 and 1656, to wit:

[fol. 6503]. "Q. (By Mr. Langsdale) Mrs. Greenhaw, I show you a document which has been marked I. L. G. W. U. exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before.

"A. Yes, I have seen it.

"Q. That is a document that purports to have been signed on the 8th day of July, 1937.

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I call your attention to that page of the document which has been marked I. L. G. W. U. exhibit No. 11-H and ask you if you find a photostat of your signature on there.

"A. Yes, I do

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"Q. This document reads—

"Trial Examiner Batten (Interrupting) Now, are you going to offer it?

"Mr. Langsdale: Yes, I am. Is there any objection?

"Mr. Ingraham: No.

"Trial Examiner Batten: Just a minute. I may have. "Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?"

"Mr. Langsdale: You can read it better than I can tell you. (Handing I. L. G. W. U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

"Trial Examiner Batten: I certainly will not receive it.

"Mr. Langsdale: On what ground do you object to it?

"Trial Examiner Batten. I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

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"Mr. Langsdale: I am offering it for the purpose of showing under what circumstances this witness was induced to sign this document, which states that 'Each of us formed our own union and selected our own representatives.'

[fol. 6504] "Trial Examiner Batten: I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

"Mr. Langsdale: Then, are you going to permit them to cross-examine her with reference to her signature on there?"

"Trial Examiner Batten: I certainly am not."

"Mr. Langsdale: I have no object in offering it except—"

"Trial Examiner Batten (Interrupting). Well, Mr. Langsdale, my position on this situation is just this—and I have had it come up in about six cases where I have been presented either with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not."

"There is only one way to determine this question of majority, and that is by an election, which is not involved in this hearing. I am not going to have a parade of witnesses here on this stand testifying, and for that reason I will not accept it."

"Now, I am making that, as a very definite statement now, so that all of you, if you have any offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter."

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?"

"Trial Examiner Batten: That is exactly what I mean."

"Mr. Ingraham: Of course, respondent excepts to the ruling."

"Trial Examiner Batten: Well, I assume that the intervenor will, too."

[fol. 6505] "Mr. Langsdale: You have nothing to except to."

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"Mr. Lane: Yes, we do. We assume we have an exception.

"Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to do it. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

"I am not going to receive it, and—

"Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

"Trial Examiner Batten (interrupting): Do you want to make that motion?

"Mr. Ingraham: Yes.

"Mr. Langsdale: It appears to me this is my offer; not yours.

"Trial Examiner Batten: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

"Mr. Stottle: Well, in view of the Examiner's statement as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

"Trial Examiner Batten: Motion denied."

271.

Respondent excepts to the rulings and action of the Trial Examiner in permitting the witness Mrs. Greenhaw to answer questions and admitting in evidence the testimony of said witness over the objections of the respondent and intervener as set forth in the following excerpts from the transcript of the record, Pages 1661, 1662, and 1664, to wit: [fol. 6506] "Q. Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was

the meeting at which the Donnelly Garment Workers' Union was formed, if you heard Miss Todd say anything at that meeting about the—officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

“Mr. Ingraham: I move the question be—I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

“Mr. Langsdale: It seems to me it—

“Mr. Fatten (interrupting): The intervener makes the same objection.

“Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

“Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't, of course, it won't.

“Mr. Langsdale: I am willing to take that chance.

Trial Examiner Batten: I think under my ruling that is your privilege.

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“Mr. Lane: Mr. Examiner, the intervener further objects for the reason that that question was asked by counsel for the International Ladies' Garment Workers' Union by reference to some statement which, from his previous statement, was made by this witness in the presence of some stenographer, outside of the presence of anybody representing the Donnelly Garment Workers' Union. The statement itself is hearsay and in no sense binding upon the intervener, and for that reason is an improper document to be used to refresh this witness' memory. The question itself calls for hearsay and cannot be binding on the intervener.

"Mr. Ingraham: Respondent makes the same objection.
[fol. 6507] "Trial Examiner Batten: You may proceed.

"Mr. Langsdale: Read the question, please.

"(Thereupon the last question was read by the reporter.)

"A. She did make such a statement."

272.

Respondent excepts to the rulings and action of the Trial Examiner in permitting the witness Mrs. Greenhaw to answer questions, and admitting in evidence her testimony in response thereto, over the objections of the respondent and intervener, as set forth in the following excerpts from the transcript of the record, Pages 1665, 1666, to wit:

"Q. (By Mr. Langsdale) Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated that she would close her shop before she would permit it to be unionized.

"Mr. Ingraham: I object to the question for the same reason that I have objected to the previous question that Mr. Langsdale asked when he was reading from this document that he has in his hand.

"Mr. Lane: Intervener makes the same objection.

"Trial Examiner Batten. I will overrule the objection.

"A. Mrs. Reed did state she would close her factory before she would permit it to be unionized.

"Q. (By Mr. Langsdale) Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

"Mr. Ingraham. Same objection.

[fol. 6508] "Trial Examiner Batten: Objection overruled.

"A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities."

273.

Respondent excepts to the rulings, comments and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record, Pages 1673, 1674, to wit:

"Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?"

"Trial Examiner Batten: Now, is this just for the purpose of establishing a time?"

"Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on."

"Trial Examiner Batten: Well, I don't propose to go into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made—are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is, what did Mrs. Reed say at this meeting."

"Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting, and that Mrs. Reed did make a speech, and the reason she had for making the speech."

Respondent excepts to the rulings, action and comments of the Trial Examiner and to the bias and prejudice of the Trial Examiner against respondent indicated thereby, as set forth in the following excerpts from the transcript of the record, Pages 1681, 1682, to wit:

"Q. Now, who are some of the other department heads that were engaging in coercion?

"A. Of course, that is a hard thing to answer.

"Q. Well, you are testifying now. Just give the names, please, Mrs. Greenhaw, of these people that were engaging in coercion.

"A. Because it was a general feeling—

"Q. (Interrupting) I am not—just answer—

"Trial Examiner Batten (interrupting): Just a minute. Let her finish.

"Mr. Ingraham: I object to it as not responsive.

"Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

"Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

"Trial Examiner Batten: Well, let her answer. We can't tell, Mr. Ingraham, until she gets through.

"Q. (By Trial Examiner Batten) What were you saying?

"A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times [fol. 6510] by the officials of the company, and I am sure that for years the company had been building up that sort of a thing.

"Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

"Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

"Trial Examiner Batten: It may stand."

275.

Respondent excepts to the rulings and action of the Trial Examiner in receiving and admitting in evidence and into the record the document referred to as Examiner's Exhibit No. 1, and to the Examiner's comments upon same, and in permitting the witness Mrs. Greenhaw to testify from and refresh her memory from said document and admitting such testimony herein, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 1713, 1714, 1715, 1716, 1717, 1718, 1719, to wit:

"Q. (By Mr. Langsdale) Let me ask you, in the statement you gave to Mr. Walsh you stated:

'Either on the day or the day before the suggestion was first made that there should be a company union organized I saw a group of seven or eight employees going into Mrs. Reed's office.' Is that right?

"A. Yes.

"Mr. Lane: Now, Mr. Examiner, may I have a continuing objection to all questions asked by counsel for the International with respect to the statement he holds in his hand, and questions where he reads from the statement, on the grounds I have heretofore stated?

[fol. 6511] "Trial Examiner Batten: Yes, you may have a continuing objection.

"Of course, I want that marked as an exhibit. It has always been my practice, whenever an attorney examines a witness from a memorandum or statement they have previously made, to ask to have that made a part of the record.

"Mr. Langsdale: I have only a copy here, Mr. Examiner. Shall I identify it and offer it?

"Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will

be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

"Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissible for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

"Trial Examiner Batten: It is received for whatever it purports to be.

"Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent recollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

"Trial Examiner Batten: Objection overruled.

"Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's Exhibit No. 1 for the reason that it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand now, and her own testimony should be the testimony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is—purports to be a carbon [fol. 6512] copy of some statement which she may have signed.

"Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

"Q. (By Trial Examiner Batten) Mrs. Greenhaw, will you look this over and tell me whether or not that is a statement that you made, and if so, when?"

"A. Yes, this is a statement I made.

"Mr. Langsdale: Read it through, will you, Mrs. Greenhaw, so you can testify from all of it.

"Mr. Lane: **** I object to the Examiner's question for the reason that this document is not the best evidence, and whether this witness can, by reading it, refresh her recollection or not, could not supply the defect; it does not cure the defect that this is not the best evidence.

"Trial Examiner Batten: The objection is overruled. I am merely trying to get into the record whatever it is. I don't know what it is, but whatever it is, she apparently testified from it, and as such, she is entitled to, whether it is an affidavit or a memorandum or whatever it is, and I merely want it in the record so that it will show what it was that refreshed her memory.

"Mr. Stottle: The respondent adds to its objection that it would be prejudicial to have it in the record, the whole document, which—only a portion of it is purportedly received, because whoever reads the record to ascertain those portions must necessarily read the whole document.

"Trial Examiner Batten: Mr. Stottle, do you mean by that that it has always been a practice to cut part of something out which is introduced for a certain purpose, and that you never introduce the whole of anything?

"Mr. Stottle: No, I don't mean that. I just say that it would be necessary for anyone, in reviewing the record, yourself, or anyone else, to read this whole document in order to read the portions that you are admitting, and that it would be prejudicial to the respondent to have a document in there which is not the testimony of this witness.

"Trial Examiner Batten: Well, the objection is overruled."

[fol. 6513] In connection with the foregoing exception, respondent excepts to the receipt of the document referred to as Trial Examiner's Exhibit No. 1 and to the

testimony received concerning same and based upon same from the witness Mrs. Greenhaw, for the reason that same wrongfully and erroneously injected into the mind of the Trial Examiner prejudice against respondent, which prejudice and bias later manifested itself in the Trial Examiner's findings, conclusions and recommendations in the Intermediate Report.

276.

Respondent excepts to the rulings, action and comments of the Trial Examiner in refusing to strike answers of the witness Mrs. Greenhaw and in overruling respondent's and intervenor's objections to the questions propounded to said witness, as set forth in the following excerpts from the transcript of the record, Pages 1729, 1730, to wit:

"Q. (By Mr. Langsdale) Did any incident occur while you were there in which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?

"A. There were so many incidents that I can hardly recall them.

"Q. Can you recall any one?

"A. There was hardly a day—

"Mr. Shepard (Interrupting): Your Honor, I ask that these answers be stricken.

"Mr. Leary: Why?

"Trial Examiner Batten: I will not strike them.

[fol. 6514] "Mr. Stottle: They are so general, Your Honor—

"Trial Examiner Batten: But, Mr. Stottle, if you will just look back toward the beginning of this hearing you will find plenty of answers that are general. I am not going to start now—

"Mr. Lane (Interrupting): Intervenor objects on the ground that it is not responsive to the question, and it is not a statement of any facts.

"Trial Examiner Batten: Mr. Lane, do you mean an attorney who is not asking a question can object on the ground that it is not responsive? Are you, the attorney

who does not ask the question, going to object that it is not responsive?

"Mr. Lane: I think if the witness gives an answer to Mr. Langsdale's question that I think is not responsive, I have a right to object, and I do object.

"Trial Examiner Batten: Objection overruled.

"Mr. Stottle: Respondent objects on the ground that it calls for a conclusion. There was no definition of the word 'conclusion'; and the answer she made was that it was of a general nature and did not state the facts, which you stated she should do.

"Trial Examiner Batten: Objection overruled."

277.

Respondent excepts to the rulings, action and comment of the Trial Examiner as set forth in the following excerpts from the transcript of the record, Pages 1733, 1734, to wit:

"Q. (By Mr. Langsdale) Did you ever hear Mr. Keyes talk to the employees about loyalty to the company?

"A. Yes.

"Mr. Lane: That is objected to as leading.

"Trial Examiner Batten: Now, Mr. Lane, you know my ruling on leading questions; I have made it so many times. You may have a continuing objection to leading questions.

"Mr. Lane: The Board, of course, will not know what I consider leading questions unless I make my objection.

[fol. 6515] "Trial Examiner Batten: Of course, I thought it would save all of these interruptions.

"Mr. Lane: Mr. Examiner, I would be very glad not to make that objection at all if there were any way of making it known what I regard as leading questions, but unless I make my objection I don't see how the Board or anybody else can tell what I regard as leading questions.

"Mr. Langsdale: The Board is supposed to have some intelligence.

"Trial Examiner Batten: I presume the persons who have to pass on this will know what weight should be given a question, irrespective of whether you think it is leading or not. If the Examiner and the Board feel it is the attorney who is doing the testifying, no weight will be given to it."

278.

In connection with the foregoing exception, respondent excepts to the rulings and action of the Trial Examiner throughout the hearing in permitting counsel for the Board and International Ladies' Garment Workers' Union to ask leading questions and place the answers desired in the mouth of the witness, and stating and announcing that testimony in response to such questions would not be given weight, and thereafter in the findings of fact, conclusions and recommendations, the Trial Examiner based same upon the testimony so elicited.

279.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's objection as set forth in the following excerpt from the transcript of the record, Page 1742, to-wit:

[fol. 6516] "Q. Prior to 1933 was there any minimum wage scale at the Donnelly plant?"

"Mr. Stottle: Respondent objects to that question as being immaterial and relating to a time so remote as not to have any bearing on this issue here.

"Trial Examiner Batten: As to the remoteness, the objection is overruled."

280.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence testimony concerning the Loyalty League and in overruling objections of the respondent and intervener thereto, and in overruling continuing objections of respondent and intervener to all testimony concerning the Loyalty League and permitting the witnesses to continue to testify thereto, which objections and rulings are set forth in the following excerpts

from the transcript of the record, Pages 1769, 1770, 1771, to wit:

"Q. Showing you your bank statement for the month of March, 1937, is it not a fact that a deposit of \$1,000 was made on March 30, 1937?

"A. That is right.

"Mr. Stottle: Just a moment. Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

"We think it is encumbering the record to go into these activities of the Loyalty League.

"We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

[fol. 6517] "Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

"Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

"Trial Examiner Batten: That may be incorporated.

"Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the union is immaterial and irrelevant.

"Trial Examiner Batten: Overruled. You desire to continuing objection, Mr. Patten?

"Mr. Patten: I do."

In connection with the foregoing exception, respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence throughout the hearing over the objections and continuing objections allowed to respondent and intervenor of testimony of the various witnesses concerning the Loyalty League and in failing and refusing to exclude said testimony and in taking said testimony into consideration in the findings of fact, conclusions and recommendations of the Trial Examiner and in refusing to strike same from the record, for the reason that the evidence shows that the Loyalty League, as such, had no part in the formation or administration of the Donnelly Garment Workers' Union and did not assist it in any way, and for the further reason that the evidence shows that the respondent did not participate in the formation or ad-[fol. 6518] ministration of the Loyalty League and did not act through it in any way, and for the further reason that the evidence affirmatively shows that the Loyalty League's activities were purely of a social character and that all evidence concerning the Loyalty League is immaterial to any of the issues involved in this proceeding and should not have been taken into consideration by the Trial Examiner in making his findings of fact, conclusions or recommendations set forth in the Intermediate Report.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 19 and in overruling respondent's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1773, 1774, to wit:

"Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official records of the Nelly Don Loyalty League that you just referred to in your testimony?

"A. That is right.

"Mr. Leary: Board offers its Exhibit 19.

"Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues

here, and also that it is not binding on the respondent in any way.

"Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

[fol. 6519] "Mr. Stottle: Well, I thought it might, but I wasn't sure that it would.

"Mr. Patten: The intervener desires its continuing objection to apply to the note.

"Trial Examiner Batten: It will be received, subject to those objections."

283.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibits Nos. 21-A to 21-O inclusive, and in overruling respondent's and intervener's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1793 and 1842, to wit:

"Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

"Mr. Stottle: Respondent makes its continuing objection to these exhibits.

"Trial Examiner Batten: You may have a continuing objection.

"Mr. Lane: We make our general objection.

"Trial Examiner Batten: That is, the same continuing objection you have made?

"Mr. Lane: Yes.

"Trial Examiner Batten: I will reserve decision on the offer.

.

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis; and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections."

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 25 and in overruling the objections of the respondent thereto as set forth in the following excerpts from the transcript of the record, Pages 1800, 1801, 1802 and 1842, to wit:

"Q. Now, I hand you this, what has been marked as Board's Exhibit 25, and ask you to state what it is, if you know.

"A. That is a statement from the First National Bank, the balance of our loan plus the interest.

.

"Mr. Langsdale: The Board offers its Exhibit 25.

"Mr. Stottle: Respondent makes the same continuing objection to this exhibit.

.

"Trial Examiner Batten: On Board's Exhibit 25, I will reserve my decision.

.

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserve a decision, will be received on the same basis, subject to the same objections."

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 26 and in overruling respondent's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1807, 1808, to wit:

"Q. I show you what has been marked for identification Board's exhibit No. 26 and ask you to state briefly what that is.

"A. A list of the dates of meetings, the first one beginning May 11, 1937, and ending with April 5, 1938.

.

[fol. 6521] "Mr. Leary: The Board offers its exhibit No. 26.

"Mr. Stottle: Respondent objects that it is immaterial and does not seem to throw any light upon the issues in this case.

"Mr. Patten: Intervener has no objection

"Trial Examiner Batten: It will be received."

286.

Respondent excepts to the rulings and action of the Trial Examiner in rejecting and refusing to receive in evidence Respondent's Exhibit No. 2 and in sustaining the objections of the Board and I. L. G. W. U. thereto, and further excepts to the rulings, comments and action of the Trial Examiner relative to the exclusion of said exhibit and similar testimony as set forth in the following excerpts from the transcript of the record, Pages 1828, 1829, 1830, to wit:

"Cross-Examination

"Q. (By Mr. Ingraham) Mrs. Tobin, you are familiar with the contracts the International has made with garment companies located in Kansas City?

"A. I am.

"Q. I will hand you respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

"A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts negotiated in 1937, but have since been renewed with exchanges. The others are the contracts that are in force now.

"Q. What are the names of the other companies?

"A. Missouri, Gernes, and Gordon.

"Mr. Ingraham: Respondent offers in evidence exhibit No. 2.

[fol. 6522] "Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and

irrelevant. It has no bearing on the issues in this matter that we are trying now.

"Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Examiner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

"Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the contracts between the Donnelly Garment Workers' Union and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

"Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

"Mr. Leary: That is it, yes.

"Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary."

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in refusing to permit the witness Wave Tobin to testify

in response to question asked by counsel for respondent and in sustaining the objection of the I. L. G. W. U. there- [fol. 6523] to, as set forth in the following excerpts from the transcript of the record, Page 1831, to wit:

"Q. (By Mr. Ingraham) I will ask you if that contract did not contain the provision that 'Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than \$15 per week per capita.'"

"Mr. Dingsdale: The International 'Ladies' Garment Workers' Union objects to the question for all of the reasons heretofore stated as objections to the offer of the contract itself."

"Trial Examiner Batten: Sustained."

288.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence the stipulation set forth on pages 1834 and 1835 of the transcript of the record with reference to the portions of the building at 1828-30 Walnut Street which was leased or occupied by respondent and in overruling respondent's and Intervener's objections thereto, for the reason that while the parties stipulated as to what the facts were, the respondent and intervener objected to said facts being admitted in evidence because same were immaterial to any of the issues herein, which said objections and ruling of the Trial Examiner are set forth in the following excerpts from the transcript of the record, Page 1836, to wit:

"Mr. Tyler: It is agreeable to me, of course, subject to the objection that it is incompetent, immaterial and irrelevant."

[fol. 6524] "Mr. Stottle: Mr. Examiner, respondent also objects that it is immaterial. We are stipulating as to the facts."

"Trial Examiner Batten: When asking you about the stipulation I am not asking you to forego any objection. All you are agreeing to is the facts; whether or not they are relevant is an entirely different matter."

"We will proceed."

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 20 and in overruling respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1841, 1842, to wit:

"Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

"Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

"Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both, that is, your continuing objections."

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 27 and in overruling respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1843, 1844, 1845, to wit:

[fol. 6525] "Mr. Leary: *** Now, I offer, Mr. Examiner, what has been identified as Board's Exhibit No. 27; a newspaper clipping from the Kansas City Times under date of May 11, 1937. Is it not a fact, Mr. Ingraham, that you agree that the reporter who took this statement, if called to testify, would testify that the statements that were attributed to Senator Reed were made to that reporter by Senator Reed?

"Mr. Ingraham: That is correct. I am not admitting that Senator Reed made the statements, but just that the reporter would so testify.

"Mr. Tyler: The intervenor admits that the reporter would so testify, and objects that nothing that Senator Reed said could in any way be binding on the intervenor."

"Mr. Ingraham: Respondent makes the same objection."

"Trial Examiner Batten: Well, it will be received on the basis of the allegations that you have in your complaint. As to what bearing it has on the issues, I think would be a matter for the Examiner to determine."

291.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence Board's Exhibit No. 29-A and 29-B and in overruling respondent's and intervenor's objections thereto as set forth in the following excerpts from the transcript of record, Pages 1845, 1846, to wit:

"Mr. Leary: Mr. Examiner, I offer for the record what has been marked for identification as Board's Exhibit 29-A and 29-B, which is a computation of the salaries received by certain individuals who are officers of the Donnelly Garment Workers' Union, such computations of these persons' salaries being from January 15, 1937 to and including December 31, 1938."

"Mr. Stottle: Yes. Respondent wants to object to the materiality of this, assuming that it is correct."

"Mr. Tyler: Intervenor makes the same objection. It has no tendency to prove or disprove any issues in this case."

"Trial Examiner Batten: It will be received."

292.

[661. 6526] Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit 23 and 24-A, 24-B and 24-C and in overruling respondent's and intervenor's objections thereto as set forth

in the following excerpts from the transcript of the record, Pages 1856, 1857, to wit:

"Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24-C.

"Trial Examiner Batten: Board's Exhibits 23 and 24 were those accounts; 23 was the special fund account of the Donnelly Loyalty League and 24 was the general fund account.

"Mr. Stottle: Respondent makes its continuing objection to any of those exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

"Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates that are found to be incorrect.

"Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

"Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

"Trial Examiner Batten: Well, they will be received."

293.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 22 over the objections of the respondent and intervener as set forth in the following excerpts from the [fol. 6527] Transcript of the record, Page 1858, to wit:

"Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

"Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24."

294.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to exclude Board's Exhibit No. 30 and in failing and refusing to sustain respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1858 and 1859, and in later accepting the N.R.A. testimony contained in said Board's Exhibit 30 and permitting the Board to offer evidence under said offer of proof (Transcript of Record, Page 2552):

"Mr. Leary: Yes, I have several matters. I have the offer of proof that I desire to make at this time, in connection with certain sub-sections of paragraph 11.

"Trial Examiner Batten: That will be marked Board's Exhibit 30.

.

"Mr. Ingraham: Well, the respondent objects to the exhibit 30 for the reason it is immaterial and irrelevant to any issue in this case, and refers to matters that occurred prior to the passage of the Wagner Act.

"Mr. Tyler: Intervener makes the same objection.

"Trial Examiner Batten: I will reserve the decision on it."

[fol. 6528]

295.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence testimony taken in the so-called N. R. A.-Judge Miller cases, and excepts separately and severally to the admission in evidence of each and every part of such testimony offered by the Board or by the I. L. G. W. U., and excepts in particular to the admission in evidence of N.R.A.-Judge Miller case Exhibit No. 1-A to 1-BBBB, and to the Examiner's ruling and action in overruling the several objections to said testimony and the several motions to strike said testimony made by the respondent and intervener (and contained in N.R.A.-Judge

Miller case Exhibit No. 2-A, 2-B and 2-C), as set forth in the following excerpts from the transcript of the record, Pages 1861, 1862, to wit:

"Trial Examiner Batten: In accordance with the stipulation, which is marked Board's exhibit No. 1-DDDD, the Board has served upon all of the parties certain testimony taken from the N. R. A. proceeding and the so-called Judge Miller case.

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"The first exhibit, N. R. A.-Judge Miller case exhibit No. 1-A to BBBB is certain testimony which is offered by the Board from the N. R. A. proceedings and it consists of 80 pages.

"N. R. A.-Judge Miller case exhibit No. 2-A, B, and C are the objections and motions of the respondent and intervener to strike the N. R. A. testimony offered by the Board. That is exhibit No. 1-A to BBBB, containing 80 pages, and the following ruling is made, endorsed on exhibit 2-A, B, and C, on sheet 2-C:—

.

"Trial Examiner Batten: *** The objection is overruled and the motion to strike is denied, and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections."

[fol. 6529]

296.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's and intervener's objections and motions to strike the testimony contained in N. R. A.-Judge Miller case Exhibit No. 1-A to 1-BBBB and to the following limitation included in said ruling; to wit: "**** and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections (subjects)", which ruling is set forth on Pages 1861-2 of the record, and further excepts to the failure and refusal of the Trial Examiner to clarify said ruling and designate

what parts of said testimony were being received and what parts were being excluded by the above quoted ruling over the objections of respondent, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1862, 1863, to wit:

"Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

"Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

.

"If there is any question about it after you go over it, I will be very glad to clarify it."

In connection with the foregoing exception, respondent calls attention to the fact that the Trial Examiner later refused to clarify the above quoted ruling and overruled respondent's motion therefor.

[fol. 6p30].

297.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence N. R. A.-Judge Miller case Exhibit 5-A to 5-GG inclusive, and in overruling respondent's and intervenor's objections thereto and motions to strike same (as contained in N. R. A.-Judge Miller case Exhibit 6-A, 6-B and 6-C), as set forth in the following excerpts from the transcript of the record, Page 1864, to wit:

"Trial Examiner Batten: ***** N. R. A.-Judge Miller case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

"Exhibit No. 6-A, B and C, the objections and motions to strike, of the respondent and intervenor.

"Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects."

In connection with the foregoing exception, respondent excepts to the limitation contained in the ruling and action of the Trial Examiner that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects", for the reason that said ruling and limitation renders it vague and indefinite what portions of the testimony referred to the Examiner intended to and did receive or exclude and what portions of said testimony the Examiner considered in arriving at his findings of fact, [fol. 6531] conclusions and recommendations, and respondent makes this exception to each and every ruling of the Trial Examiner to which said above quoted limitation was appended.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence N. R. A.-Judge Miller case Exhibit 9-A to 9-CC inclusive, and in overruling the objections of the respondent and intervener thereto, and in denying the motions to strike said testimony of the respondent and intervener, and further excepts to the limitations contained in said ruling, as set forth in the following excerpts from the transcript of the record, Page 1865, to wit:

"Trial Examiner Batten: *** 9-A to 9-CC is certain testimony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

"In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

"The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction

of evidence upon certain subjects. The objections being marked 10-A, consisting of one sheet, and the rulings entered thereon."

300.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence N. R. A. Judge Miller case Exhibits 13-A to 13-R inclusive, and in overruling the objections of the respondent thereto (contained in Ex- [fol. 6532] -hibit 14), and further excepts to the limitation included in said ruling, as set forth in the following excerpt from the transcript of the record, Page 1866, to wit:

"Trial Examiner Batten: . . . NRA-Judge Miller Case Exhibits 13-A to 13-R, consisting of 18 pages, is certain testimony from the Judge Miller case offered by the Board.

"Exhibit 14 is the objections by the respondent to 13-A to 13-R, and the following ruling:

"Objection is overruled and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, and, further, it is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects."

301.

Respondent excepts to the ruling of the Trial Examiner sustaining the Board's motion of June 21 to amend the complaint, which ruling is set forth on page 1870 of the transcript of the record.

302.

Respondent excepts to the ruling and action of the Trial Examiner set forth on page 1870 of the transcript of the record permitting the Board to present the witness referred to in Board's exhibit No. 30.

303.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to sustain or rule upon respondent's motion to dismiss the Complaint in its en-

tiety (Board's Exhibit I-FFFF) submitted at the close of the Board's case (Page 1872), and in failing and refusing to sustain or rule upon the oral demurrer or motion to [fol. 6533] dismiss of the intervener made at the close of the Board's case (Page 1873), and further excepts to the ruling and action of the Trial Examiner in requiring respondent to proceed with its case prior to a ruling upon its said motion to dismiss, as set forth in the following excerpts from the transcript of the record, Pages 1872, 1873, 1889, 1890, 1891, to wit:

"Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

"Trial Examiner Batten: That will be marked Board's exhibit No. I-FFFF.

Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

"Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence introduced, if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Workers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any degree, order, or judgment affecting the rights and interests of the intervener.

Mr. Stottle: . . . Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

[fol. 6534] "Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in.

"Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

"That no basis has been laid for any finding that the company coerced or intimidated or influenced any employee in joining the Donnelly Garment Workers' Union;

"And that no basis has been laid for any possible finding that the company contributed, directly or indirectly, financial aid or other aid to the Donnelly Garment Workers' Union;

"No basis has been laid that the union is not a bona-fide labor union, with all of the rights guaranteed such union under the Wagner Act;

"And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees and is not entitled to representation of all of the employees in collective bargaining.

"Trial Examiner Batten: Those additional reasons, I presume you call them, Mr. Tyler— . . . will be considered in connection with the disposition of the motion."

304.

Respondent excepts to the rulings and action of the Trial Examiner in failing to sustain or rule upon respondent's motion to dismiss each of the separate paragraphs of the Complaint which motion was marked Board's Exhibit 1-GGGG and was made and filed at the close of the Board's case (Page 1874) (and argued at Pages 1874 to 1889 inclusive), and further excepts to the ruling and action of the Trial Examiner in requiring respondent to proceed with its case and evidence prior to a ruling upon said motion,

[fol. 6535] as set forth in the following excerpts from the transcript of the record, Pages 1874, 1889, to wit:

"Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

"Trial Examiner Batten: The first is a general motion, and this is a specific motion.

"Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

"Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

"Mr. Stottle: * * * Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

305.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to strike from the record all the evidence upon each and all of the various paragraphs of the Complaint and in failing and refusing to sustain respondent's motions therefor, contained and set forth at the bottom of respondent's motion to dismiss, and in requiring respondent to proceed with its case and evidence prior to a ruling upon said motion to strike, as set forth in the following excerpts from the transcript of the record, Page 1889, to wit:

"Mr. Stottle: Then, at the bottom of our motion we have moved that the Examiner strike from the record all evidence upon the various paragraphs which the Examiner does dismiss.

[fol. 6536] "Mr. Stottle: The motion goes to striking all evidence on the other paragraphs that you may dismiss, as well as (s).

"Trial Examiner Batten: I will reserve decision on that.

"Mr. Stottle: . . . Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in later failing and refusing to sustain respondent's said motion to strike all the evidence introduced under each and all of the paragraphs of the Complaint and in permitting said evidence to remain in the record, and further excepts to the action of the Trial Examiner in taking said evidence into consideration in his findings of fact, conclusions and recommendations set forth in the Intermediate Report.

306.

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to clarify his rulings upon the N. R. A. Judge Miller case testimony and in denying respondent's request for such clarification, as set forth in the following excerpts from the transcript of the record, Pages 1891, 1892, to wit:

[fol. 6537] "Trial Examiner Batten: . . . Mr. Stottle, you have something further?

"Mr. Stottle: This has reference, Mr. Examiner, to your ruling made this morning on the N. R. A. and Judge Miller case testimony submitted by the Board.

"In substance the ruling was the same on all of them, and reads: ' . . . the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings. It is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects.'

"Of course we are somewhat in a dilemma to understand just what we are required to meet there.

"Trial Examiner Batten: I would say, Mr. Stottle, if there is the least doubt in your mind, you submit your evidence and then I will tell you whether it is material or not.

"Mr. Stottle: You mentioned that there are certain subjects you do not want to go into. If you could just tell us what subjects you mean—

"Trial Examiner Batten: I think the record is clear on that. If it is not, I will clear it up as we go along."

307.

Respondent excepts to the rulings and action of the Trial Examiner in limiting and excluding evidence offered by the respondent as set forth on Pages 1903 and 1904 of the transcript of the record, and further excepts to the ruling and comment of the Trial Examiner therein set forth to the effect that the testimony in N. R. A. Judge Miller case Exhibits Nos. 1 to 16, with reference to the discharge of certain employees (except Tubbesing, Fry and Brooks) should be stricken, and in thereafter considering said testimony so stated to be stricken, and basing his findings of fact, conclusions and recommendations thereon, for the reason that said rulings and action of the Trial Examiner were highly misleading, unfair and prejudicial to respondent, [fol. 6538] and in preventing respondent from putting in evidence concerning the matters stated by the Trial Examiner to be stricken by the said witness then on the stand, to wit, Mrs. Elizabeth Reeves, and by other witnesses which respondent might have called if said misleading ruling had not been made, as set forth in the following excerpts from the transcript of the record, Pages 1903, 1904, to wit:

"Q. I will ask you, Mrs. Reeves, if among the 300 employees that were laid off there was Ellen Fry, Tillie Shirlee, Pauling Lutz, Mamie Tubbesing, Thelma Owen, Glynn Brooks, Nora McKee, Olive Thompson—

"Trial Examiner Batten (Interrupting): Now, are we interested in that entire list?

"Mr. Ingraham: Your Honor, the next question I intend to ask Mrs. Reeves is whether or not over half of these people were called back to work?"

"Trial Examiner Batten: Oh, well, then, I thought perhaps you—

"Mr. Langsdale: If he is permitted to ask that we certainly want to disprove it on rebuttal.

"Trial Examiner Batten: You go ahead and make your objections and I will pass upon the objections when they are made.

"Mr. Ingraham: That is just what I don't understand. I understood Mr. Langsdale and the Board have offered evidence regarding these people, and their offers have been received.

"Mr. Leary: Not regarding all of the persons you have named. I suggest you read Board's exhibit No. 30 and note that it includes only three names.

"Mr. Ingraham: But you submitted evidence on more than those three people, and the evidence has been received, as I understand it. You submitted evidence on about ten of them.

"Trial Examiner Batten: You mean in some of those other exhibits this morning?

"Mr. Ingraham: Yes.

[fok 6539] "Trial Examiner Batten: Of course if there is other evidence there with respect to their discharge it should be stricken out, shouldn't it, Mr. Leary?

"Mr. Leary: If it is limited strictly to their discharge, yes, but as to discriminatory remarks, and so forth, made to these persons, I don't think it should be stricken.

"Trial Examiner Batten: I will say now, if there is any such testimony, Mr. Ingraham, in the exhibit, it certainly wasn't my intention that any of that testimony should remain in there with respect to the discharge of these people except those three; and in the N. R. A. Judge Miller case exhibits Nos. 1 to 16 if there is any testimony of that nature it may be stricken, with respect to the discharge of all of the persons except—what were those three, Mr. Leary?

"Mr. Leary: Tubbesing, Fry, and Brooks."

Respondent excepts to the rulings and action of the Trial Examiner in refusing to admit in evidence Respondent's Exhibit No. 6 for the purposes for which same was offered by respondent and in limiting its admission in evidence, as set forth in the following excerpts from the transcript of the record, Pages 1907, 1908, 1909, 1910, 1911, to wit:

"Q. (By Mr. Ingraham) Mrs. Reeves, I hand you Respondent's Exhibit 6, which is a newspaper article appearing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Wave Tobin, and ask you if you have read that article:

"A. I did.

"Mr. Ingraham: The respondent offers in evidence Exhibit 6.

• • • • •
"Trial Examiner Batten: For what purpose?

"Mr. Ingraham: For the purpose of showing the situation at this time, and I will offer other articles up until April 23d, when Sylvia Hull and May Fike had their difficulty at the plant.

• • • • •
[fol. 6540] "Trial Examiner Batten: Well, I might say that I don't like trying these Labor Board cases in the newspapers.

"Mr. Ingraham: Well, Mr. Leary offered a long article of Senator Reed's, and it set out the background and the history, and I am showing our side of this background. Now, I am asking this witness—

"Trial Examiner Batten: Well, is this all contained in the Judge Miller testimony?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, then, I will say you had better submit it as a transcript from that.

"Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony, but I would like to examine this witness in regard to whether

or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence.

“Mr. Ingraham: I am setting it up for the purpose of showing the situation.

“Trial Examiner Batten: The general situation?

“Mr. Ingraham: At that time.

“Trial Examiner Batten: You mean, background?

“Mr. Ingraham: That is right.

“Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

“Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

“Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influence that would—

[fol. 6541]. “Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background, as the Board had in the NRA proceeding. They showed it almost entirely by transcript of that testimony. Now, if this means calling a large number of witnesses for that purpose, I don't want to have the background, as I have said so many times in this case, become the picture.

“Mr. Ingraham: I don't think it will result in that.

“Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expected to use it for.”

Respondent excepts to the rulings, action and comment of the Trial Examiner concerning Respondent's Exhibit No. 7, and to the failure and refusal of the Trial Examiner to give consideration to said exhibit, and to his comments that said exhibit "doesn't prove anything", as set forth in the following excerpts from the transcript of the record, Page 1917, to wit:

"Trial Examiner Batten: On the basis I received the other one, and this one, it doesn't open up anything, because I am not receiving it to show the truth or the untruth of any statements in the article, merely as an article from the newspaper for whatever it is worth.

"Mr. Langsdale: If it is worth anything, it is worth rebutting.

"Trial Examiner Batten: I say, there is nothing to rebut if it doesn't prove anything. If it doesn't prove the truth or the untruth of any statement contained in it, I don't think it opens up anything.

"Mr. Leary: For all of your reasons, I don't think it should be admitted, Mr. Examiner.

"Trial Examiner Batten: Well, I am admitting it, Mr. Leary, as I told Mr. Ingraham, and he is offering it for the purpose of showing the background of what was occurring about that time, and on that basis I will receive it."

[fol. 6542]

310.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to admit in evidence Respondent's Exhibits 8-A and 8-B for the purposes for which same were offered by respondent and stated by counsel for intervenor, and in refusing to consider same for such purposes or upon such issues, and in limiting the purposes for which same were admitted, as set forth in the following excerpts from the transcript of the record, Pages 1918, 1919, 1920, to wit:

"Mr. Ingraham: Well, then respondent offers Exhibits 8-A and 8-B.

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"Mr. Langsdale: Now, I assume that this letter is admitted that it will be admitted as one of the newspaper articles, not as a matter in controversy that we have a right to prove was true, or they would have a right to prove was false, unless the matters are within the issues as have been defined by this complaint and by the Examiner? This letter goes into a great many matters that are not before the Examiner here, and if they are going to try to offer—set up an automaton and knock him down, we want to be permitted to prop him up again.

"Mr. Ingraham: Well, if Your Honor please, the Board and Mr. Langsdale have offered evidence that Mrs. Reed read this letter to a meeting, and they have brought the letter into issue.

"Mr. Langsdale: We didn't read the contents:

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"Trial Examiner Batten: Well, of course, I don't propose to try the truth or the untruth of any of the statements in the letter.

"Mr. Langsdale: That is all I want to know.

[fol. 6543] "Trial Examiner Batten: I think I said at one stage in this case that, granting that everything that was said in the answer were true, it still wouldn't answer the charge of an unfair labor practice. In other words, everything that is said might be true and still there would be an unfair labor practice. I will receive it on the same basis that I received the others, and for the additional reason that it is the letter referred to in the meeting of March 18, 1937, which has been testified to here, I think by two or three different people.

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"Mr. Tyler: Well, I ask your Honor to receive it also on the ground that it would throw some light on the question of whether these employees were dominated by their employer and forced to form a labor union, or whether this letter and the effect it had on them was not a cause of their forming a labor union.

"Trial Examiner Batten: Well, I will reserve my decision on that, Mr. Tyler, because I assume that you will want to go over a good many of these and make an offer all together. Wouldn't you prefer to do that, without waiving any of your rights?"

311.

Respondent excepts to the rulings and action of the Trial Examiner in admitting evidence referred to as the "N. R. A. Testimony" offered by the Board and I. L. G. W. U. at various times and in various forms during the hearing, and over the continuing objections of the respondent and intervener, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1978, 1979, to wit:

"Mr. Stottle: Mr. Examiner, respondent, of course, objects to this N. R. A. testimony as being immaterial because it related to matters long before the organization of the Donnelly Garment Workers' Union and before the passage of the National Labor Relations Act, and we would object to these questions on the same basis that we have to the N. R. A. testimony.

[fol. 6544] "Trial Examiner Batten: Mr. Stottle, I don't know whether the record is clear or that it is understood, but, as I recall, you made a continuing objection to all testimony that refers to a time prior to the passage of the Wagner Act. And, if I am not mistaken, Mr. Tyler, you joined in that objection.

"Mr. Tyler: I intended to.

"Trial Examiner Batten: I think the record is quite clear.

"Mr. Stottle: May it be understood, if it isn't clear our objection is made?

"Trial Examiner Batten: If it isn't clear, it is understood that you have an objection; and Mr. Tyler, also.

312.

Respondent excepts to the rulings, comments and action of the Trial Examiner in refusing to permit respondent, or intervener to introduce evidence relating to a compari

son of the contracts between respondent and intervener union with contracts made between the I.L.G.W.U. and other garment manufacturing companies in Kansas City and vicinity, and in refusing to permit testimony as to the terms and conditions contained in such contracts between the I.L.G.W.U. and other garment companies in Kansas City and vicinity, which rulings and comments are set forth in the following excerpts from the transcripts of the record, Pages 2033, 2034, 2035, to wit:

"A. **** Then the vacation schedule came up, and while I, individually, of course, learning this from Mrs. Reed when I came out here nearly 7 years ago, believed in vacations, inasmuch as this clause is the only kind that I know of in the needle work industry contract, I wasn't sure that the company should bind itself to give vacations with pay, which prior to that time had been optional and in the discretion of the management.

[fol. 6545] "Trial Examiner Batten: Now, just a moment, Mr. Keyes. Mr. Keyes, volunteering that statement there, I thought that we had the understanding that—I mean, I advised you, rather—I don't know as you all agree with me—that I didn't want to get into a comparison of this contract with other contracts, and I limited the Board's testimony the other day, when I asked them the direct question, if all the questions which they asked applied only to how the contract was negotiated.

"Now this, of course, being up—Mr. Keyes volunteering this statement that no needle contract has such a phrase any place, you are beginning to compare the contracts.

"The important thing with this contract, and with this union, is not what is in this contract. The important thing is, did the union, in good faith, and the respondent, sit down and negotiate a contract?

"Now, a union can negotiate any terms they see fit in a contract. So, the only question here is, did Mr. Tyler and the committee representing the Donnelly Garment Workers' Union negotiate in good faith, did the respondent negotiate in good faith? And, having arrived at an agreement, they put it in writing and signed it. Therefore,

Mr. Keyes' statement about this particular paragraph in comparing it with some other contract, I don't consider that it should be accepted, in accordance with my prior ruling. Therefore, I won't receive it.

"Mr. Tyler: Your Honor has in mind that the intervenor asserts that comparison with other contracts is valid and admissible evidence to show the genuine negotiation of this contract and the genuineness of the desires of the employees to negotiate in this matter, and have their own union, and we except to your ruling that comparisons are not proper.

"Trial Examiner Batten: Yes, I understand your position, Mr. Tyler, and I only say in answer to that, this: that the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union or any other union can negotiate any contract they want. I mean, they could go out here and negotiate a contract for less wages, less salaries, no vacations, and abominable conditions, if the union wanted to do it. So I say that I am not concerned about comparison of these contracts. I am concerned about, did they actually negotiate, and agree on these things, and when they agreed, sign the contracts; and, of course, as I understand it, that is the matter, Mr. Tyler, which you except to?

"Mr. Tyler: Yes.

"Mr. Ingraham: Respondent excepts."

[fol. 6546]

313.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to the testimony offered by respondent, as set forth in the following excerpts from the transcript of the record, Pages 2071, 2072, to wit:

"Q. Did Fern Sigler leave after that conversation?

"A. She left. I think it was some 30 minutes, or something like that, after she got to the office.

"Q. State whether or not she then performed services for the International Ladies' Garment Workers' Union?

Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Ingraham) Do you know whether or not she called on the customers of the Donnelly Garment Company in Kansas City?

"Mr. Langsdale: I object to that as immaterial. This is not an 8 (3) case.

"Trial Examiner Batten: Sustained."

314.

Respondent excepts to the rulings and action of the Trial Examiner in denying to respondent the right to examine witness with respect to Sylvia Hull's being in Atlantic City, and to the Examiner's comments that said testimony was not material, and to his action in striking same from the record, as set forth in the following excerpts from the transcript of the record, Pages 2073, 2074, to wit:

[fol. 6547] "Q. Did you later learn that Sylvia Hull was in Atlantic City attending the International Ladies' Garment Workers' Union convention?

"A. I did.

"Q. Was there a newspaper article in the papers regarding that?

"A. There was."

"Q. (By Trial Examiner Batten) You mean, she was there at the time these calls were made?

"A. No. She was there after the calls were made trying to locate her.

"Trial Examiner Batten: Then, I don't see what that has to do with it. I don't think it has anything to do with it if it was after these calls were made."

"Mr. Ingraham: If Your Honor please, I want to show that we not only called but later learned she was in Atlantic City, and therefore there wouldn't have been any use to call, if she was there."

"Trial Examiner Batten: I don't think that is material at all. The testimony about her being in Atlantic City, if it was after your attempts to call, may be stricken out."

Respondent excepts to the rulings and action of the Trial Examiner in refusing to admit in evidence Respondent's Exhibit No. 10 for all purposes as offered by respondent and in limiting its admission in evidence, and in ruling and stating that the Examiner would receive same "for just what they are worth as newspaper articles and that is all", as set forth in the following excerpts from the transcript of the record, Pages 2076, 2077; 2078, to wit:

[fol. 6548] "Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is.

"A. It is 'Justice,' published by the International Ladies' Garment Workers' Union.

"Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

"Trial Examiner Batten: What date is that?

"Mr. Langsdale: June 1, 1957.

"Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you care to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

"Mr. Ingraham: Yes, indeed. This is the official paper of the International.

"Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper.

"Mr. Ingraham: Even though it is published by the International?

"Trial Examiner Batten: I don't care who it is published by.

"Mr. Ingraham: Wouldn't that be considered as an admission?

"Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it on the same basis you offered the other newspaper articles, I will receive it on that basis.

"Mr. Ingraham: I offer it, of course, for all purposes.

"Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and then you may have your exception.

"Mr. Ingraham: I am still offering it for all purposes, and you are not allowing it to be received for all purposes?

[fol. 6549] "Trial Examiner Batten: That is correct. But my question still is, do you want me to receive it on the same basis I did receive exhibits Nos. 6 and 7, having refused to receive it for general purposes?

"Mr. Ingraham: Oh, yes.

"Mr. Stottle: Mr. Examiner, may it not also be received to show that she said these things, even though the things she did say were not true?

"Trial Examiner Batten: Mr. Stottle, I assume this article is in the same class as the other two, it speaks for itself.

"Mr. Stottle: You let Senator Reed's statement in to show that he said certain things, didn't you?

"Trial Examiner Batten: It was stated, in connection with that, that if the reporter were here he would testify Senator Reed said those things. I will receive it on that basis, although that is not Mr. Ingraham's offer. I am not going to receive these newspaper articles as proving or disproving anything that is said in them. I will receive them for just what they are worth as newspaper articles, and that is all."

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit the witness Baty to answer the question, "Did you do all you could to stop the demonstration", referring to the alleged demonstration at the Donnelly plant on April 23, 1937, as set forth in the following excerpts from the transcript of the record, Page 2153, to wit:

"Q. (By Mr. Ingraham) Was any other official of the company there at the time?

"A. There was not.

"Q. Did you do all you could to stop the demonstration?

"Mr. Langsdale: Now, just a moment. I still think that his answer should be based upon the question as to whether or not he knows. The fact that no other executive was there at the time doesn't show that it wasn't planned the night before or the night before that.

[fol. 6550] "Trial Examiner Batten: It may stand for whatever value it has. What was the last question?

"(Whereupon, the last question was read by the reporter.)

"Trial Examiner Batten: That certainly is repetition. You went into quite some detail yesterday about what he did when he went up on the floor with these different girls, and sent the others back, and so forth. Of course, if you want him to just categorically deny everything that is in the complaint, just read it to him and then I have no objection to him denying it, Mr. Ingraham."

317.

Respondent excepts to the ruling and action of the Trial Examiner in receiving testimony concerning I. L. G. W. U. exhibit No. 17 over the objections of the respondent as shown on Pages 2306 to 2310, inclusive, of the transcript of the record, and in considering said evidence in arriving at his findings of fact, conclusions and recommendations contained in the Intermediate Report.

318.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 30 and in overruling respondent's and intervenor's objections thereto and their motions to reject said offer of proof, and to the Examiner's ruling and action in accepting said offer of proof and the N. R. A. testimony in said offer, and in permitting witness to testify under said offer of proof, as set forth in the following excerpts from the transcript of the record, Pages 2367, 2368 and 2552, to wit:

[fol. 6551] "Mr. Stottle: Mr. Examiner, the Board has filed an exhibit, marked 30, which is an offer of proof concerning Ellen Fry, Glynn Brooks, and Mamie Tubbesing. The respondent has prepared an objection and motion to reject that offer of proof, which we now wish to present to you.

"I might say that this objection was made in the name of the respondent only but that this morning Mr. Tyler, representing the intervener, has added a clause at the bottom stating that he joins in the objection and motion, and that appears upon the paper which we are presenting.

"Trial Examiner Batten: This will be marked Board's exhibit No. 1-HHHH, I will take the original with me.

"Mr. Tyler: I wish to state I have gone over this paper and considered it, and wish to join in it, as indicated by the signature at the bottom.

"Trial Examiner Batten: It will be taken under advisement.

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"Trial Examiner Batten: Now, on the matter of the Board's Exhibit 1-III, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked 'Board's Exhibit 30', the objections are overruled and the motion to strike is denied, which means, Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer."

319.

Respondent excepts to the rulings, comment and action of the Trial Examiner in refusing to permit respondent to call and examine witnesses concerning the circulation and signing of the petition of March 2, 1937, and in limiting the number of witnesses which might be called to testify concerning same and in requiring respondent to make an offer of proof thereon as to other witnesses, as set forth in the following excerpts from the transcript of the record, Pages 2457, 2458, to wit:

[fol. 6552] "Q. Did you sign the petition that was circulated March 2d? .

"A. I did.

"Q. Did any officer of the company ask you to sign that petition?

"A. No.

"Trial Examiner Batten: Well, now, Mr. Ingraham, do I understand that you intend to call a large number of individual employees?

"Mr. Ingraham: Yes, your Honor.

"Trial Examiner Batten: To testify?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, now, of course, I don't propose to have a large number called to testify to this point. You may call a reasonable number, and use your own judgment as to what is reasonable.

"Mr. Ingraham: All right, your Honor.

"Trial Examiner Batten: And make an offer of proof on the entire balance, if you want to, but I am not going to listen to all of them, but you use your own judgment as to what you think is a reasonable number, and at that time I think we can probably determine what will be done."

320.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining objection to the following question asked by respondent of the witness Atherton, as shown in the following excerpts from the transcript of the record, Page 2463, to wit:

"Q. Mr. Atherton, did you witness any violence at the Missouri, Gernes, or Gordon plants during the month of March, 1937?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained."

[fol. 6553]

321.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the Board's objection to question

asked by respondent of the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2466, 2467, to wit:

"Mr. Langsdale: Is that the March 18th meeting?

"Mr. Ingraham: March 18th.

Q. (By Mr. Ingraham) Did the employees take any action at that meeting?

"A. They did not.

Q. Did the violence at the Missouri, Gernes and Gordon plants increase from that date on?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained."

322

Respondent excepts to the rulings, action and comments of the Trial Examiner in sustaining objections of the Board and I. L. G. W. U. to question asked of the witness Atherton by counsel for the intervener on Page 2500 of the record, and in refusing the offer of proof made by counsel for the intervener on Page 2501 of the record, concerning the disturbances at the Missouri, Gordon and Gernes factories prior to March 18, 1937, and to the question asked of said witness by counsel for intervener on Page 2501 of the record as to the state of mind of employees of the Donnelly Garment Company in regard to said conditions at the Missouri, Gordon and Gernes plants, [fol. 6554] and to the comments of the Trial Examiner concerning said matters, and to the ruling and action of the Trial Examiner in making the same ruling upon respondent's objection to said ruling and to respondent's offer of proof on said matters, as set forth in the following excerpts from the transcript of the record, Pages 2500, 2501, 2502, 2503, 2504, 2505, 2506, to wit:

"Q. (By Mr. Tyler) Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Tyler) What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

"Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

"Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

"Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937, was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys, and later on was one of the impelling reasons for them to organize their own labor union.

"Mr. Leary: I will object to the offer on the same grounds.

[fol. 6555] "Trial Examiner Batten: The offer is refused.

"Mr. Langsdale: The International Ladies Garment Workers' Union objects to the offer upon the ground that it includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

"Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

"Trial Examiner Batten: Well, of course, I assume—I don't know—I wasn't here, but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, is conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

"Now, my point on this is this: that if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in any way assisted it, even if you were to prove that all the 1,350 employees in here were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor practice, irrespective of what the employees do, because they can do whatever they please, I mean, within reasonable limits, and I thought I ought to make that statement just in explanation of my ruling.

"Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties. I do say that there is no more important fact, and no fact approaching in importance the fact of what caused the employees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

[fol. 6556] "I submit that the employees asserting that they formed the plant of their own free will; will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer domination, but was fear and dislike of what

the International was doing in its campaign to organize garment workers in Kansas City.

"I take it I have an exception to your Honor's ruling without—

"Trial Examiner Batten (interrupting): Well, of course, you have an automatic exception.

"Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

"Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

"Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

"Trial Examiner Batten: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't they can have any motive they please.

Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling."

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit testimony offered by intervenor concerning the visit of employees of respondent [fol. 6557] to Chief Higgins of the police force or to call and examine witnesses with reference thereto, as set forth in the following excerpts from the transcript of the record, Pages 2523, 2524, to wit:

"Q. Was there any particular incident that you know of that brought about the visit of the employees to Chief Higgins of the police force?

"A. Yes; the rumored threats that we would be next on the list—

"Trial Examiner Batten: Now, just a moment. I think that is covered entirely by the offer of proof that I have asked for, Mr. Tyler.

"Mr. Tyler: Very well.

"Trial Examiner Batten: I mean, in those paragraphs which Mr. Langsdale has asked to have stricken, as I recall it, those matters are covered.

"Mr. Tyler: Your Honor rules this witness cannot testify as to the visit of the employees to Chief Higgins and what it was for?

"Trial Examiner Batten: I have merely said, when I receive those offers of proof, which includes this matter, I will then determine how much, if any, of that we will take testimony upon."

324.

Respondent excepts to the ruling and action of the Trial Examiner overruling respondent's objection to questions asked the witness Atherton by Mr. Langsdale, as set forth in the following excerpts from the transcript of the record, Pages 2572, 2573, to wit:

"Q. (By Mr. Langsdale) I will ask you if you heard Mrs. Reed make this statement this is contained in the affidavit on page 861:

"In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet to discuss ways and means to protect themselves'.

"And then skipping—

[fol. 6558] "Mr. Ingraham (Interrupting): I object to Mr. Langsdale skipping. If he is going to read from this affidavit, he ought to read it so it is connected up.

"Mr. Langsdale: I am merely asking this witness if he heard this statement made.

"Trial Examiner Batten: Well, I think that thus far in the hearing, there have been many instances where a witness has been asked whether they heard a certain thing, and, certainly, they haven't read the entire affidavit or the entire testimony, either.

"Q. (By Mr. Langsdale) Skipping down to the last sentence of that paragraph, taking it up with that sentence, in which she says:

"... I went to the meeting and told them that the Company's attorneys would consider what legal steps might be advisable in the event the union carried out its threats."

"Did you hear Mrs. Reed make that statement?"

325

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to sustain respondent's objection to question asked the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2573, 2574, to wit:

"Q. - Now, you have been here in the court room waiting to testify how long, Mr. Atherton?

"Mr. Ingraham: I object to that. It is immaterial to any issue in this case. He has a perfect right to be in the court room.

.

"Trial Examiner Batten: You may proceed, and I will determine whether it has anything to do with it."

326.

[fol. 6559] Respondent excepts to the ruling and action and comments of the Trial Examiner refusing to permit respondent to produce further witnesses or testimony concerning the March 18 meeting and forcing respondent to make offers of proof as to other witnesses concerning same, as set forth in the following excerpts from the transcript of the record, Page 2607, to wit:

"Trial Examiner Batten: Mr. Stottle, I will permit this witness to testify, but I certainly don't intend to listen

to any more witnesses of what occurred at the March 18th meeting, because thus far in the record, there is apparently no dispute. I mean, there is no use of going on with an unlimited number of witnesses telling about a meeting. So if there is any further witness to be offered on the March 18th meeting, it will have to be in the form of an offer of proof.

"Mr. Stottle: Mr. Examiner, of course, the respondent's position is that if that matter is controverted, we are entitled to show by any number of witnesses as to what did happen.

"Trial Examiner Batten: Well,—

"Mr. Stottle (Interrupting) And we are willing to make an offer of proof as to this witness, or succeeding witnesses.

"Trial Examiner Batten: I say, you may proceed with this witness, but I am telling you now that if you had in mind offering any further witnesses about this March 18th meeting, I don't propose to go into it.

"Mr. Stottle: Well, in view of your Honor's ruling, we will make offers of proof as to other witnesses."

327.

Respondent excepts to the ruling and action of the Trial Examiner sustaining objections to question asked the witness Nellie Stites, and to the comments, rulings and action of the Trial Examiner refusing to permit respondent to introduce testimony that the Donnelly Garment [fol. 6560] Workers' Union and its executive committee represent the free choice of respondent's employees as their bargaining agency concerning wages, hours and working conditions in the Donnelly plant and requiring respondent to submit offers of proof concerning said matter, as set forth in the following excerpts from the transcript of the record, Pages 2610, 2611, 2612, to wit:

"Q. Does that union, the Donnelly Garment Workers' Union, and its bargaining committee represent your free choice in that matter?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: What was the ruling, Mr. Examiner?

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one of these three complaints or charges in the complaint, and we submit that one of the best ways of finding out whether a person did a thing of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

"Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, 'Is this your free choice?'. I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

"Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

[fol. 6561] "Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?

"Trial Examiner Batten: I didn't even intimate such a thing.

"Mr. Tyler: I understood you to say that their testimony, as to what they wished, would be either of no value or extremely little value.

"Trial Examiner Batten: I didn't say any such thing, I don't think.

"Mr. Tyler: I misunderstood you, then.

"Trial Examiner Batten: The record will state what I said in my remarks.

"Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

"Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

328.

Respondent excepts to the rulings, action and comments of the Trial Examiner sustaining objection to question asked the witness Mrs. Stites, and refusing to permit respondent to introduce evidence concerning strikes and disturbances caused by the I.L.G.W.U. at the Gordon, Gernes and other garment factories in Kansas City and the effect thereof upon the employees of respondent and requiring respondent to make offers of proof concerning said matters, as set forth in the following excerpts from the transcript of the record, Pages 2612, 2613, to wit:

[fol. 6562] "Q. (By Mr. Stottle) Mrs. Stites, had you heard of the strikes and disturbances down at the Gordon and Gernes plants at about that time in March and April, 1937?

"Mr. Leary: I object to that for the reason that it is immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed his union, as tending to show that it was not due to the domination of the Donnelly Garment Company.

"Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter.

You may make such offer as in your opinion is necessary to protect the interests of your client."

329.

Respondent excepts to the rulings, action and comments of the Trial Examiner made while the witness Nellie Stites was on the stand, as set forth in the following excerpts from the transcript of the record, Pages 2615, 2616, 2617, to wit:

"Mr. Stottle: Mr. Examiner, as to the two matters which you have excluded his witness from testifying to, respondent desires to make this offer of proof:

"Respondent offers to prove by this witness that if permitted to answer appropriate questions, she would testify that at or prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was no coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon her by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives or supervisory officials, or anyone representing the management, to cause or influence her, or which did cause or influence her to join or support the Donnelly Garment Workers' Union.

"Trial Examiner Batten: Well, now, that is with respect to what ruling? The one on the meeting of March 18th?

[fol. 6563] "Mr. Stottle: No, as with respect to the ruling that she joined this of her own free will, if your Honor will permit her to testify that she did, and other witnesses to testify on the question of whether she did join of her own free will, of course, we would prefer to call the witnesses.

"Trial Examiner Batten: Well, what do you mean, reverse my ruling? Is that what you mean?

"Mr. Stottle: Well, I thought you were intimating that I was making a different offer of proof.

"Trial Examiner Batten: Well, I do think it is different than even my ruling. You say to this witness 'You join of your own free will.' Now, [you] offer is to show that the respondent in no way coerced or intimidated this witness. I don't think that is quite the same thing, do you?

"Mr. Stottle: Well, I will ask the question.

"Trial Examiner Batten: I say, do you think it is the same?"

"Mr. Stottle: I do think so. If she joined of her own free will, I don't think she was coerced by the Donnelly Garment Company.

"Trial Examiner Batten: Well, of course, if you think it is the same thing, and that is what you mean by what you just said, then I will reject the offer.

"Mr. Stottle: Well, I would rather ask the question and have your Honor rule it out or let it in.

"Trial Examiner Batten: I don't care to pass upon it. If you think it is the same thing, I will reject that part of the offer."

330.

Respondent excepts to the ruling and action of the Trial Examiner in striking the answer of the witness Nellie Stites to the question asked, as set forth in the following excerpts from the transcript of the record, Page 2617, to wit:

[fol. 6564] "Q. (By Mr. Stottle) Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union, on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union?"

"A. None.

"Trial Examiner Batten: Well, now just a moment. The answer may be stricken."

331.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit the witness Nellie

Stites to testify concerning the domination of the Donnelly Garment Workers' Union by the respondent and concerning coercion upon or interference with the respondent's employees concerning their free choice of a union or bargaining agency and requiring respondent to make offers of proof concerning said matters and when respondent proceeded to make offers of proof thereon, stating and ruling that such offers are outside said matters and in requiring as a condition precedent to the making of such offers of proof that the respondent prepare "appropriate questions", as appears in the transcript of the record, Pages 2620 to 2631, and in later rejecting the offers of proof made by respondent and joined in by intervenor (Page 2652) as to said witness Nellie Stites and as to other witnesses.

[fol. 6565]

332.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit respondent to ask the witness Nellie Stites questions regarding strikes and disturbances at other garment plants and in refusing the offer of proof made by respondent concerning said matters as to said witness Nellie Stites contained on Page 5 of Board's Exhibit No. 1-JJJJ, as set forth in the following excerpts from the transcript of the record, Pages 2637, 2638, to wit:

"Q. Mrs. Stites, I will ask you to state whether you knew or heard of strikes—

"Trial Examiner Batten (interrupting): Now, Mr. Stottle,—that finishes that offer?

"Mr. Stottle: That finishes that part of it.

"Trial Examiner Batten: Well, I don't think it is at all necessary for her to answer any questions about the strikes and trouble in the other plant, because that, if you have an offer ready on that, I can pass on that one now.

"Mr. Stottle: Well, it is the last page of what I have given you.

"Trial Examiner Batten: It is all in one, is it?

"Mr. Stottle: I put it all together as an offer of proof by this witness.

"Trial Examiner Batten: * * * Now, as to the last page, which is page 5, of the offer of proof on the Gernes and Gordon factories, and that other matter, that offer, as in accordance with my rulings, several rulings during the hearing, is refused."

[fol. 6566]

333.

Respondent excepts to the rulings and action of the Trial Examiner in striking out the answers of the witness Nellie Stites made in response to questions asked her by counsel for the intervener, as set forth in the following excerpts from the transcript of the record, Pages 2648, 2649, 2650, to wit:

"Q. Did you have knowledge of the disturbances down at the Gordon, Gernes, and Missouri Plants in the spring of 1937?

"A. Yes, sir, I did.

"Q. What was the effect on the Donnelly Garment Company employees of these disturbances at the Gordon, Gernes and Missouri plants in the spring of 1937?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: You may ask your questions, but then I will ask you to present an offer of proof.

"Mr. Tyler: We will be very glad to join in the offer of proof, if the Examiner doesn't want to hear that.

"Trial Examiner Batten: I didn't overlook that you were asking the questions, but I thought, in order to have the record indicate it, your question and the answer could go in, but then I intended to ask for an offer of proof.

"Mr. Tyler: Your Honor rules that she may answer this question?

"Trial Examiner Batten: Yes.

"Mr. Langsdale: The International Ladies' Garment Workers' Union wants to object on the ground that it calls for a conclusion of the witness and is invading the province of the Examiner, without any basis for showing that this witness knew what the effect was upon any other employee than herself.

"Mr. Tyler: I think it is a matter of fact which one constantly in a plant can testify to, as to the general attitude in the plant as to certain things—if she knows.

[fol. 6567] "Trial Examiner Batten: Well, if she knows, that is always different.

"Mr. Langsdale: He didn't put that in his other questions.

"Trial Examiner Batten: You may answer.

"A. We had been reading all of these articles in the paper about the strikes over there—

"Mr. Langsdale (Interrupting): I object to that and ask that it be stricken as not responsive.

"Trial Examiner Batten: You may answer.

"A. (Continuing) —and we had talked to a lot of the girls, and a lot of them had been talked to by people who worked over at these other plants, and of course we were told that they were coming over to our plant—the expression they used was 'to get us next.' And there was quite a bit of fighting over there, and tearing of clothes off. Naturally, we felt we needed some protection of some kind.

"Mr. Langsdale: I ask that all of that part of the answer about what had been going on over there be stricken out as not responsive to the question.

"Trial Examiner Batten: It may be stricken."

Respondent excepts to the rulings and action of the Trial Examiner in refusing to permit the witness Nellie Stites to answer question propounded by counsel for the intervenor and in refusing the offer of proof made by intervenor thereon and in sustaining objection to subsequent question asked said witness, as set forth in the following excerpts from the transcript of the record, Pages 2650, 2651, to wit:

"Q. (By Mr. Tyler) You talked to people who told you they had met with violence at the Gordon and Gernes plants?

"Trial Examiner Batten: Now, I think I have indicated all through this hearing that I am not going into those matters, Mr. Tyler.

[fol. 6568] "Mr. Tyler: Then, intervenor joins in the same offer of proof on this matter just offered by the respondent.

"Trial Examiner Batten: You mean page 5, Mr. Tyler? That is the page that applies to this matter.

"Mr. Tyler: Yes.

"Trial Examiner Batten: With reference to the offer on page 5, it will be refused.

"Mr. Tyler: And also, repeat the offer of proof which intervenor made on the same subject heretofore.

"Trial Examiner Batten: The offer is refused. In order to identify that, the respondent's offer of proof has been marked 1-JJ-JJ, and you are now referring to the fifth page of that?

"Mr. Tyler: Yes, sir.

"Q. (By Mr. Tyler) Mrs. Stites, did any officer of the company, or representative of officers of the company, tell you about these things you have said you heard about, or did you hear them from other people?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

335.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to questions asked the witness Mrs. Lynn Davis by counsel for respondent, as set forth in the following excerpts from the transcript of the record, Page 2676, to wit:

"Q. (By Mr. Stottle) Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or anyone else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as cumulative."

[fol. 6569] "Trial Examiner Batten: Sustained."

"Q. (By Mr. Stottle) Did you hear Mrs. Read state that she would never let the International Union into her plant?"

"Mr. Leary: Same objection."

"Trial Examiner Batten: Sustained."

336.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to question asked the witness Mrs. Martin by counsel for intervener and striking the answer made thereto, as set forth in the following excerpts from the transcript of the record, Pages 2702, 2703, to wit:

"Q. (By Mr. Patten) Have you ever heard any employee complain that they didn't want to join the Donnelly Garment Workers' Union?"

"A. No, sir."

"Mr. Leary: I object to that as calling for hearsay, and also, that it is immaterial."

"Mr. Patten: I asked what she heard."

"Trial Examiner Batten: I will sustain the objection. It is immaterial; and I will overrule the matter of hearsay."

"Mr. Leary: I move the answer be stricken."

"Trial Examiner Batten: It may be stricken."

337.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to questions asked Mrs. Martin by counsel for intervener, as set forth in the following excerpts from the transcript of the record, Pages 2703, 2704, to wit:

[fol. 6570] "Q. Do you know of any employee that is dissatisfied with the committee of the Donnelly Garment Workers' Union as their bargaining agent?"

"Mr. Leary: I object to that as immaterial."

"Trial Examiner Batten: Sustained.

"The witness: May I answer that question?

"Trial Examiner Batten: No.

"Q. (By Mr. Patten) Are you afraid of the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Patten) Were you afraid of that union in the spring of 1937?

"Mr. Leary: Same objection.

"Trial Examiner Batten: Same ruling."

288.

Respondent excepts to the ruling, action and comments of the Trial Examiner as set forth in the following excerpt from the transcript of the record, Page 2712, to wit:

"Trial Examiner Batten: Mr. Patten; on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness."

[fol. 6571]

339.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit Respondent to

offer further witnesses concerning the meeting of April 27, 1937, and requiring respondent to submit offers of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2731 and 2766, to wit:

"Trial Examiner Batten: Mr. Stottle, I think after this witness covers the meeting of April 27, unless there are some new matters, I will not hear from any further witnesses about it, because I think there has been sufficient testimony about that meeting. As I said in other instances, you might call another witness and ask the questions and show that the witness was not permitted to answer, or you may submit your offer of proof as though the witnesses were here and present.

• • • • •

"Trial Examiner Batten: Mr. Stottle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses."

340.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence I. L. G. W. U. Exhibit No. 16 over the objections of respondent and intervener, as set forth in the following excerpts from the transcript of the record, Pages 2771, 2772, to wit:

"Mr. Stottle: Mr. Examiner, respondent is not objecting to the lack of identification, but respondent does object that it does not tend to prove or disprove any issue in the case and would therefore be immaterial.

• • • • •

[fol. 6572] "Mr. Tyler: We have no objection to the offer of the picture, but we do object if the picture is offered with the inference that it is of the meeting of April 27, because the context shows it refers to a meeting of May 11.

• • • • •

"Trial Examiner Batten: It will be received for whatever value it has."

341.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's motion to strike out answers of the witness Glynn Brooks Yarnell, as set forth in the following excerpts from the transcript of the record, Page 2809, to wit:

"A. I told her I had been informed that the old Donnelly girls, that is, the union girls were being reinstated, and I told her I would like to come back to work if that was true.

"She said, 'Glynn, we have a lot of old girls out we would have to place before we place you.'

"I said, 'Well, I would like to work if there is any chance for me to.'

"She said, 'If you do we will not recognize your union. You will have to join ours.'

"I said that was all right, I didn't expect her to.

"Mr. Ingraham: I move that the answer be stricken out. It goes beyond the allegations of the complaint.

"Trial Examiner Batten: Objection overruled."

342.

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to sustain motion to dismiss and demurrer to the evidence made by intervenor at the close of respondent's case (Page 2813 of transcript of record) and in later overruling said motion and demurrer.

[fol. 6573]

343.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit intervenor to offer further witnesses or testimony concerning the meeting of March 18, 1937, as set forth in the following excerpt from the transcript of the record, Page 2822, to wit:

"Trial Examiner Batten: Now, Mr. Tyler, as far as this March 18 meeting is concerned, there is no need of any more witnesses testifying to it, unless you have something you want to go into that has not already been covered."

Respondent excepts to the ruling, action and comments of the Trial Examiner, refusing to permit intervenor to offer further witnesses or testimony concerning the negotiations between the Donnelly Garment Workers' Union and respondent concerning the contract of May 27, 1937, and to the Examiner's action, ruling and comments that further witnesses will not be permitted on said subject unless they can testify to new matters, and the Examiner's refusal to permit the offering and questioning of witnesses upon said matter to determine whether such witnesses can testify as to matters not theretofore covered by other witnesses, and in overruling respondent's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 2833, 2834, 2835, 2836, 2837, to wit:

[fol. 6574] "Q. (By Mr. Tyler) I hand you Board's exhibit No. 6; being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

"Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have been two members of this executive committee testify in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this witness, but Miss Todd and Mr. Atherton, both of whom were at this meeting, testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

.

"Mr. Stottle: Mr. Examiner, respondent would say, in that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

"Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before examining his witness, so that he should be able to judge that. I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four other witnesses have testified to, I don't think it is necessary.

"Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying, for the reason you have indicated, that is an important matter; and, for the reasons Mr. Tyler has stated.

"Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

"Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

"Trial Examiner Batten: I will reserve my decision.

[fol. 6575] "Mr. Tyler: For the present the ruling is, this witness is not allowed to go into the negotiations of May 27, 1937?

"Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered,

"Q. (By Mr. Tyler) Do you know, Mr. McConaughey, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

"A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

"Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses?

"A. No, sir.

"Q. Were you present at any negotiations of June 21 or June 22, 1937?

"Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objection to his being excluded from testifying, because it is

apparent that no one could determine now whether he has any new matters or not.

"Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?"

"Mr. Stottle: Yes.

"Trial Examiner Batten: And you, Mr. Tyler?"

"Mr. Tyler: I have been absent a day or two.

"Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane, or someone, representing you every day of this hearing, have you not?"

"Mr. Tyler: Yes."

"Mr. Stottle: But, Mr. Examiner, I have never discussed with Mr. McConaughy one word as to what his negotiations were—

"Trial Examiner Batten: I want the record to show that while the witnesses have not been here all of the time, the attorneys have been."

[fol. 6576]

345.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the objection of the Board to questions and answers of the witness Jack McConaughy, as set forth in the following excerpts from the transcript of the record, Page 2838, to wit:

"Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937?"

"A. Yes, sir.

"Q. What were the principal subjects of discussion?"

"A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while.

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?"

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit evidence concerning strikes and violence at other garment plants in Kansas City and the effect thereof upon respondent's employees, and in striking the answer of the witness Jack McConaughy, as set forth in the following excerpts from the transcript of the record, Pages 2838, 2839, 2840, 2841, 2843, to wit:

"Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

[fol 6577] "A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

"Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

"And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

"Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees' organization by unions and matters of that kind.

"I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

"Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then, I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

* * * * *

"Mr. Langsdale: What about this answer he just made to the last question? Does that stand, so that it will be the subject of cross-examination?

* * * * *

"Trial Examiner Batten: Of course, I do not expect to have cross-examination on a matter which I have asked for an offer of proof on and stated that I don't consider it to be material. Therefore, I wouldn't consider the witness' answer, or the question, material.

* * * * *

[fol. 6578] "Mr. Langsdale: I move to strike the answer of the witness to the last question.

"Trial Examiner Batten: It may be stricken.

* * * * *

"Mr. Stottle: Respondent does except to the striking of this answer."

347.

Respondent excepts to the ruling, action and comments of the Trial Examiner refusing to permit further witnesses or testimony on the question of interference with the free will of respondent's employees in regard to their labor union affiliations and in regard to the meeting of April 27, 1937, and in regard to the meeting of approximately March 27 to April 5, 1937, and in commenting that evidence on said matters is not deemed material by the Trial Examiner, for the reason that such comments show the bias and prejudice of the Trial Examiner and show that he did not intend to consider such evidence and that

he did not consider such evidence in arriving at his findings of fact, conclusions and recommendations, and for the further reason that said rulings deprived the respondent and intervener of material and competent evidence and of a fair trial upon the charges contained in the Complaint, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 2857, 2858, 2859, to wit:

"Q. Do you know of any employee in the plant ever complaining that pressure was brought on him or her with regard to his or her affiliation with any labor union?

"A. No, sir.

[fol. 6579] "Mr. Tyler: That is all.

"Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness for some other purpose—I don't know as there is any objection to asking that question, although I don't consider it material to ask a witness that on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don't want you to think that by passing the matter up—In other words, if you contemplate calling 1,200 employees and asking them that question, it is an entirely different matter.

"On the meeting of April 27, which this witness testified to, unless you have witnesses that can add something to what has already been testified to, I don't want you to offer any further witnesses on it. You may make it in an offer of proof.

"As to the March 27 to April 5 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

.

"Mr. Tyler: And as to the other matter, the free will of the witnesses, of course Your Honor understands my position, that that is as much a fact as his indigestion or

whether he has a broken leg, and the best way to get that is to ask him about it.

.

1 "Trial Examiner Batten: If you intend, as Mr. Ingraham indicated to me that he did, calling a very large number of witnesses to testify to that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material, for the reasons I have previously stated in the record, but I wouldn't have any objection to it."

348.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objections of respondent and intervener to question asked the witness by Mr. Langsdale on cross-examination, as set forth in the following excerpt from the transcript of the record, Page 2864, to wit:

[fol. 6580] "Q. (By Mr. Langsdale) Did you know at the Judge Miller hearing the position of the International Ladies' Garment Workers' Union was that Judge Miller of the District Court had no right to pass upon whether or not the Donnelly Garment Workers' Union was legally formed, and for that reason defendants put in no testimony tending to show it was legally formed?"

"Mr. Tyler: I object to the question as calling for a conclusion of law by this witness.

"Mr. Stottle: Respondent makes the same objection.

"Trial Examiner Batten: He may testify, if he knows."

349.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit the offer of further witnesses or testimony upon the question of domination of respondent's employees in regard to their union affiliations, as set forth in the following excerpts from the transcript of the record, Pages 2922, 2923, 2924, to wit:

"Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

"A. Well, in the first place—

"Trial Examiner Batten (Interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

"Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

"Trial Examiner Batten: You mean by that, you contemplate calling all of the employees to testify to this question?

"Mr. Tyler: I contemplate calling a large number.

"Trial Examiner Batten: I can tell you now, I do not intend to listen to them.

[fol. 6581] "Mr. Tyler: Well, on the present question—

"Trial Examiner Batten (Interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say, 'Now, is this the union you want?' And so on, and so forth. 'This is no place to determine what the employees want. An election is the place to determine that. The thing we are trying to determine in this hearing is, did this company have anything to do with forming this union, or sponsoring it?' That is the question we are trying to determine.

"Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

"Trial Examiner Batten: Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by a secret election, where they can vote and no one know how they vote. If you have a large number of witnesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

"Mr. Tyler: Does that ruling go into effect immediately preceding this witness?"

"Trial Examiner Batten: That is right."

350.

Respondent excepts to the ruling, action and comments of the Trial Examiner refusing to permit the witness Mrs. Weigand to answer questions propounded to her by counsel for intervener, and in sustaining objections of counsel for the I. L. G. W. U. thereto, and in ruling and announcing that such evidence is not material to the issues in this case, and in refusing to receive further testimony from said witness or other witnesses upon said matters, as set forth in the following excerpts from the transcript of the record, Pages 2939, 2940, 2941, 2942, 2943, to wit: "

[fol. 6582] "Q. Did you ever hear Velma Dowdy testify in that case?"

"A. Yes, I did.

"Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?"

"Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

"Mr. Tyler: That is what I am leading up to.

"Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

"Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are \$10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the em-

employees have a right to select any union they want to select, and pay any dues they want to pay.

"Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing it by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probable or improbable should throw some light on whether they are telling the truth.

"If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union—

"Trial Examiner Batten (Interrupting): She wouldn't be forced to pay it unless she joined it, would she?

"Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

[fol. 6583] "Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

"Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

"Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

"Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

"Trial Examiner Batten: We are not interested in the reason for joining.

"Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answering the questions as to the effect the testimony of Velma Dowdy had on her?

"Trial Examiner Batten: Yes."

351.

Respondent excepts to the rulings and action of the Trial Examiner in excluding evidence by the witness Lyle Jeter concerning violence to employees at other garment companies in Kansas City and threats that similar violence would be done at the Donnelly plant and as to the effect thereof upon the respondent's employees and further excepts to the comments of the Trial Examiner concerning the materiality of such evidence, and to his action [fol. 6584] and rulings in sustaining objections thereto, and in striking answers given, and refusing intervenor's offer of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2993, 2994, 2995, 2996, 2997, to wit:

"A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up—

"Trial Examiner Batten (Interrupting): Tell me how you were threatened.

"Mr. Langsdale: I move that that part, the last part of his answer be stricken.

"Trial Examiner Batten: It may be stricken. Tell me how you were threatened.

"A. I have to tell a little bit about this first part, if I may.

"Q. (By Trial Examiner Batten) Did somebody threaten you personally?

"A. Threatened the Donnelly Garment Company.

"Q. Tell me what they said, and who it was.

"A. As this old lady got up and started in the building somebody said, 'Isn't that awful, the way they are treating her?' And Miss Tobin said, 'That's just a sample of what we are going to do down at Donnelly's.'

"Q. (By Mr. Patten) Did you report that at the plant?

"A. I talked it over with the employees.

"Q. Mr. Jeter, did you take any part in the meeting at which the Donnelly Garment Workers' Union was organized?

"A. I did.

"Trial Examiner Batten: Now, Mr. Patten—

"Mr. Patten (Interrupting): This is a point that has not been covered.

[fol. 6585] "Trial Examiner Batten: The point you have finished covering, I don't think that is material to this case.

"Mr. Patten: I understood you had said if we had cases involving actual threats to persons employed by the Donnelly Garment Company we could put that in.

"Trial Examiner Batten: Yes, if you have any actual threats of violence committed as to any employee of the Donnelly Garment Company, that should be in here. I don't think this sort of testimony has anything to do with it.

"Mr. Patten: That was a personal threat. He was an employee of the Donnelly Garment Company, standing around and heard this remark.

"Trial Examiner Batten: I do not consider that as a personal threat to him. That is something that may have occurred a thousand times. If somebody personally threatened this man, or something of that sort, I think that testimony would be relevant.

"Mr. Langsdale: Is this answer to be stricken then, so that it is not subject to cross-examination or rebuttal?

"Trial Examiner Batten: I want to hear the attorneys first.

"Q. (By Mr. Patten): Mr. Jeter, did you interpret that as a threat to the employees of the Donnelly Garment Company?

"Mr. Leary: I object to that as calling for a conclusion.

"Trial Examiner Batten: Objection sustained.

"Mr. Patten: The only thing lacking, apparently, under your definition of a threat, was for them to address him personally and say, 'You, Mr. Jeter, are going to be—'

"Trial Examiner Batten (Interrupting): Now, Mr. Patten, if a Donnelly employee was threatened personally, or any violence committed, I will receive that testimony. The fact that this man happened to be down there where something was going on and heard some remarks—I think there were some remarks like that in the paper, too, but I don't consider that matter an issue in this case. I think that is a matter between the employees. I don't see how the company can be held responsible for that situation.

[fol. 6586] "Mr. Patten: It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—In so far as we show these circumstances which motivated them we negative the contention of the Board and the International.

"Trial Examiner Batten: That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question.

"Mr. Patten: Mr. Examiner, the intervener offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that those acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union started its drive to organize the Donnelly plant.

"Trial Examiner Batten: And the other witnesses' testimony would be substantially the same as this testimony?"

"Mr. Patten: And that those threats were made in connection with the International Ladies' Garment Workers' Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered stricken.

"Trial Examiner Batten: The offer is refused.

"Mr. Stottle: Respondent excepts to the striking of the answer and to the refusal of the offer."

352.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining objection to and striking answer of the witness Lyle Jeter, as set forth in the following excerpt from the transcript of the record, Page 2998, to wit:

"A. Miss Todd said as she called the names of the ones to be on the nominating committee, to stand up, and she called my name.

"Q. Were you surprised or not when that happened?"

"Mr. Leary: Oh, I object to that as immaterial.

[fol. 6587] "Trial Examiner Batten: Sustained.

"Mr. Leary: And I move that the answer be stricken.

"Trial Examiner Batten: It may be stricken."

353.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to admit in evidence Intervener's Exhibit No. 20-A to 20-KK inclusive (also referred to as Intervener's Exhibit No. 18), and in refusing same as an offer of proof, as set forth in the following excerpts from the transcript of the record, Pages 3042, 3044, 3045, to wit:

"(Mr. Tyler) I now offer in evidence the exhibit, which I will ask the stenographer to mark intervener's exhibit No. 18, lettering it from A to whatever that results in.

"(Thereupon the photographs above referred to were marked for identification Intervener's Exhibit No. 20-A to 20-KK, inclusive.)"

"Mr. Tyler: That is an affidavit for an election.

"Trial Examiner Batten: You are offering these?

"Mr. Tyler: Yes, sir.

.

"Trial Examiner Batten: It will not be received. You may incorporate it in the offers of proof if you want to.

"Mr. Ingraham: We have made an offer—

"Trial Examiner Batten (Interrupting): I say, this is refused, and if any of the parties want to incorporate the material in an offer of proof, you may do so.

"Mr. Tyler: Very well.

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"Trial Examiner Batten: It is refused now as an offer of proof."

[fol. 6588]

354.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence I. L. G. W. U. Exhibit No. 19 over the objections of the respondent and intervenor, as set forth in the following excerpts from the transcript of the record, Pages 3057, 3058, 3059, 3060, 3061, 3062, to wit:

"Mr. Langsdale: I offer from the February 16th issue of the Liberty magazine the only editorial in that magazine. I do not offer anything except the one-page editorial.

"Mr. Ingraham: We object. It is immaterial to any issue in this case. There is no showing that this is the editorial referred to.

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"Mr. Tyler: We object. There is no showing this is the editorial that was read.

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"Mr. Lane: There is no showing who wrote this article, Board's exhibit No. 2, or that it was accurate.

* * * * *

"Mr. Tyler: There is no evidence that the Donnelly Garment Workers' Union or the Nelly Don Loyalty League had anything to do with that publication, regardless of who got it out.

"Trial Examiner Batten: Of course, there is the allegation in here, I believe, that the Loyalty League is a labor organization—in the complaint.

"It will be received for whatever value it has.

"(Thereupon the editorial above referred to was marked for identification 'I.L.G.W.U. Exhibit No. 19,' and received in evidence.)

* * * * *

"Mr. Langsdale: * * * Offer I. L. G. W. U. exhibit No. 19.

"Mr. Shepard: Respondent is making the same objection previously made.

"Trial Examiner Batten: Subject to the objection both parties have made, it is received."

[fol. 6589]

355.

Respondent excepts to the ruling and action of the Trial Examiner in denying the motion of intervenor to strike out all the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, as set forth in the following excerpt from the transcript of the record, Page 3062, to wit:

"Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or the Donnelly Garment Company, and that nothing said or done at that meeting could in any way bind the respondent or the intervenor.

"Trial Examiner Batten: The motion is denied."

356.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the motion of respondent to strike Board's Exhibit No. 18 (18-A to 18-J) as set forth in the following excerpt from the transcript of the record, Page 3068, to wit:

"Mr. Ingraham: I move to strike exhibit No. 18. There has been no showing that the exhibit was in the possession of the Witness Greenhaw up to the time that she testified, and it now appears it has been in the possession of other parties, who have not appeared and testified it is the document which Elsa Graham Greenhaw transcribed.

"Mr. Langsdale: Of course Elsa Graham Greenhaw had the exhibit in her hands when she testified, and said this was the carbon of the minutes she took and turned over to Mr. Walsh's office.

"Trial Examiner Batten: Objection overruled."

[fol. 6590]

357.

Respondent excepts to the ruling and action of the Trial Examiner in denying respondent's motion to strike the answers of the witness Bucker set forth on Pages 3069 and 3070 of the transcript of the record.

358.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the objections of respondent and intervener to question asked the witness Mrs. Fike and in permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Pages 3077, 3078, to wit:

"Q. Was there ever any change, as far as you knew, in the duties of the instructors at the Donnelly Garment Company plant from the time you went to work there in 1926 or 1927 up to the time you left there in May, 1937?

.

"Mr. Tyler: I object that she is not in a position to testify to what the duties were of the instructors at the Donnelly Garment Company plant.

"Mr. Ingraham: Respondent makes the same objection."

"Trial Examiner Batten: She may answer. Objection overruled."

359.

Respondent excepts to the ruling and action of the Trial Examiner in overruling objection of intervenor to question asked the witness Mrs. Fike and permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Page 3084, to wit:

"Q. (By Mr. Langsdale) Was there any change, as far as you observed, in the authority of the instructors from the time you went to work there in 1933 until you left on March 8, 1937?

[fol. 6591] "A. No, sir.

"Mr. Tyler: I object that this witness cannot tell by observation whether there was any change in the authority of the instructors.

"Trial Examiner Batten: I presume she is answering us to what she knows."

360.

Respondent excepts to the action of the Trial Examiner in failing and refusing to sustain respondent's motion to dismiss the entire complaint and also its motion to dismiss each and all of the paragraphs of the complaint which motions were renewed at the close of the case, and also excepts to the action of the Trial Examiner in failing and refusing to sustain intervenor's motion to dismiss the complaint which motion was renewed at the close of the case, which motions appear in the transcript of the record at Pages 3102, 3103, as follows, to wit:

"Mr. Stottle: Mr. Examiner, we desire to renew our motion to dismiss, which I think was marked Board's Exhibit No. 1-FFFF, and related to the whole complaint; and, also, renew our motion to dismiss each and all of the paragraphs in the complaint, which is Board's Exhibit No. 1-GGGG.

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"Mr. Tyler: Intervener renews its motion to dismiss as heretofore filed."

[fol. 6594]

366.

Respondent excepts to the failure and refusal [to] the Trial Examiner to accept respondent's and intervenor's offers of proof or evidence and each of same, to wit: Board's Exhibits Nos. 1-JJJJ, 1-OOOO, 1-QQQQ, 1-RRRR, and the various other offers of proof made during the hearing, excepting thereto severally and separately as to each and every part of such offers and as to each and every witness therein named, and further excepts to the Trial Examiner's failure and refusal to permit the respondent and intervenor to produce witnesses and intro- [fol. 6595] duce testimony in accordance with such several offers of proof and to his failure and refusal to consider said offered evidence in making his findings of fact, conclusions and recommendations set forth in the Intermediate Report:

367.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to permit respondent to introduce evidence upon the conspiracy and other matters set forth in Section B of Respondent's Answer including evidence of violence to employees of other garment companies caused by the International Ladies' Garment Workers' Union and threats that similar violence and tactics would be used upon respondent's employees, and that such facts were the motivating cause for the formation by respondent's employees of the Donnelly Garment Workers' Union, as their voluntary action and not as the result of any domination, interference, influence or assistance by or on the part of respondent.

368.

Respondent excepts to the failure and refusal of the Trial Examiner to consider and/or give effect to the findings of fact, conclusions and decree of the District Court of the United States for the Western Division of the Western District of Missouri, made and rendered (by Judge Andrew Miller) in Case No. 2924 entitled, "Donnelly Gar-

ment Company, et al., vs. International Ladies' Garment Workers' Union, et al.," and offered in evidence by respondent in this proceeding.

[fol. 6596]

371

Respondent excepts to the Trial Examiner's failure and refusal to strike the evidence introduced by the Board upon each of the paragraphs of the Complaint, as moved by the respondent at the close of the Board's case (Board's Exhibit No. 1-GGGG) and renewed by respondent at the close of the entire case (Transcript of Record, Page 3102).

[fol. 6597]

372.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence and considering the testimony offered by the Board and/or International Ladies' Garment Workers' Union from the transcript of the evidence taken before the NRA Regional Labor Board, Twelfth District, Case No. 160, styled "International Ladies' Garment Workers' Union, Complainant, vs. Donnelly Garment Company, Respondent", and the several excerpts therefrom, hereby excepting separately and severally to the testimony and each and every part thereof or excerpt therefrom of each and every witness, so offered, including Ellen Fry, Thelma Owen, Glynn Brooks, Mamie Tubbesing, Elizabeth Gates Reeves, Lillian Wales, Frances Riedel, Pauline Lutz, Virginia Stroup, Dewey Atchison, Gladys Ellege Richardson, R. L. Blume, Meyer Perlstein, Lillian White, Marie Patton, Bessie Neimoyer, Ella Mae Guerrant Hyde, Mrs. James A. Reed, contained in N.R.A.-J.M.C. Exhibit Nos. 1-A to 1-BBBB inclusive, pages 1 to 80, and including Tillie Shirley, Lillian Rutherford, Elizabeth Reeves, Lou Perkins and Thelma Owen contained in N.R.A.-J.M.C. Exhibit No. 17.

373:

Respondent excepts to the ruling and action of the Trial Examiner in overruling the objections and denying the motion to strike of respondent and intervener (said objection and motion being N.R.A.-J.M.C. Exhibit Nos. 2-A to [fol. 6598] 2-C inclusive), which objections and motion were

directed to the testimony contained in N.R.A.-J.M.C. Exhibit Nos. 1-A to 1-BBBB inclusive.

374.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence and considering the testimony offered by the Board and/or International Ladies' Garment Workers' Union from the transcript of the evidence taken before Judge Andrew Miller in Case No. 2924, in the District Court of the United States for the Western Division of the Western District of Missouri, entitled "Donnelly Garment Company, et al., vs. International Ladies' Garment Workers' Union, et al., Donnelly Garment Workers' Union, Intervener", and the several excerpts therefrom, hereby excepting severally and separately as to the testimony and each and every part thereof or excerpt therefrom of each and every witness, so offered, including David Dubinsky, Meyer Perlstein, Thelma Owen, Lillian Wales and Frances Riedel, contained in N.R.A.-J.M.C. Exhibit Nos. 5-A to 5-GG inclusive, Pages 1 to 22, and Sylvia Hull contained in N.R.A.-J.M.C. Exhibit Nos. 7-A to 7-CC inclusive.

375.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the objection and denying the motion to strike of respondent and intervener (said objections and motion being N.R.A.-J.M.C. Exhibit 6-A to 6-C inclusive), which objections and motion were directed to the testimony contained in N.R.A.-J.M.C. Exhibit Nos. 5-A to 5-GG inclusive.

[fol. 6599]

376.

Respondent excepts to the rulings and action of the Trial Examiner in overruling the several objections made by respondent and/or intervener to the testimony and excerpts thereof from the old N.R.A. Case No. 160 and the Judge Miller Case No. 2924, which said objections and rulings were made or endorsed upon the exhibits containing said offered testimony.

377.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence N.R.A.-J.M.C. Exhibits

Nos. 9-A to 9-CC inclusive, and in overruling respondent's and intervenor's objections thereto, including each of those endorsed on the exhibits and those contained in N.R.A.-J.M.C. Exhibit No. 10-A.

378.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's objections (N.R.A.-J.M.C. Exhibit No. 14) to N.R.A.-J.M.C. Exhibits Nos. 13-A to 13-R inclusive.

379.

Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations of the Trial Examiner therein, for the reason that same thwart and violate the prime purposes and provisions of the National Labor Relations Act (to wit: that employees have the right to bargain with their employer through representatives of their own choosing and that employers are required to deal exclusively with such representatives of a majority of their employees), in that the evidence clearly and overwhelmingly shows that the Donnelly Garment Workers' Union and its executive committee was at all times the free choice of a majority (in fact 100%) of respondent's employees as their bargaining agency and by reason of which the contracts of May 27 and June 22, 1937, between respondent and that union were valid, and the findings, conclusions and recommendations of the Trial Examiner being contrary thereto are, and any order of the Board in accordance therewith would be, in contravention of the National Labor Relations Act and illegal.

Wherefore respondent prays that its exceptions be sustained and the Complaint dismissed.

Respectfully submitted,

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